# ANALYST CHECKLIST

# HCSC – LARGE GROUP MAJOR MEDICAL

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| Issuer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  SERFF Tracker ID: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Network Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Sub-networks: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Provider Network Type (Single or Tiered\*): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Effective Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Network Line of Business (dental, medical, medical and vision, vision):  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

\* TIERED as described in [WAC 284-170-330](http://apps.leg.wa.gov/WAC/default.aspx?cite=284-170-330)

Policy = contract between group and issuer  
Contract = agreement as a whole, including policy, application, enrollment form, certificate of coverage, schedule of benefits (if any), and any other forms made a part of the contract by the terms of the policy

| **Topic** | **Subtopic** | **Reference** | **Specific Issue** | **Location**  **Form/Page #** |
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| **Appeals Procedures**  ***Resources:***  [**ACA FAQ I**](http://www.dol.gov/ebsa/faqs/faq-aca.html)**; DOL FAQs on Claims**  **Appeals Procedures**  **(Cont’d)**  **Appeals Procedures**  **(Cont’d)**  **Appeals Procedures**  **(Cont’d)**  **Appeals Procedures**  **(Cont’d)**  **Appeals Procedures**  **(Cont’d)**  **Appeals Procedures**  **(Cont’d)**  **Appeals**  **Procedures**  **(Cont’d)**  **Appeals**  **Procedures**  **(Cont’d)**  **Appeals**  **Procedures**  **(Cont’d)**  **Appeals**  **Procedures**  **(Cont’d)**  **Appeals**  **Procedures**  **(Cont’d)**  **Appeals**  **Procedures**  **(Cont’d)** | Internal appeals / review of adverse benefit decisions under Both Grand-fathered and Non-Grand-fathered plans  Internal appeals / review of adverse benefit decisions under Both Grand-fathered and Non-Grand-fathered plans  (Cont’d)  Internal appeals / review of adverse benefit decisions under Both Grand-fathered and Non-Grand-fathered plans  (Cont’d) | 42 U.S.C.  §300gg-19(a);  45 C.F.R. §147.136(b);  RCW 48.43.530(1);  WAC 284-43-3030(1) | Does the plan have a fully operational, comprehensive process for review of appeals / adverse benefit determinations? |  |
| WAC 284-43-4020(1) | The issuer’s process for review of adverse benefit determinations must meet accepted national certification standards such as those used by the National Committee for Quality Assurance, except as otherwise required under Chapter 284-43 WAC. |  |
| RCW 48.43.530(8);  WAC 284-43-3050;  WAC  284-43-4020(2)(a) | * Does the contract provide a clear explanation of the appeal / review of adverse benefit determination process? |  |
| RCW 48.43.530(9)  WAC 284-43-3050(4);  WAC  284-43-4020(2)(b) | The process must be accessible to enrollees who are limited English speakers, who have literacy problems, or who have physical or mental disabilities that impede their ability to file an appeal or review of adverse benefit determination. |  |
| RCW 48.43.530 (3) | Does the contract notify the enrollee of the issuer’s responsibility to provide written notice to the enrollee or the enrollee's designated representative, and the enrollee's provider, of its decision to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits, including the admission to or continued stay in a health care facility? |  |
| RCW  48.43.530(4)  (a)and (b) | * An issuer must process as an appeal / review of adverse benefit determination an enrollee's written or oral request that the issuer reconsider its decision to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits, including the admission to, or continued stay in, a health care facility. |  |
| RCW  48.43.530(4)(c) | * The issuer may not require that an enrollee file a complaint or grievance prior to seeking an appeal or review of an adverse benefit determination. |  |
| RCW 48.43.530(7) | Does the contract notify the enrollee that, when the enrollee requests reconsideration of a decision to modify, reduce, or terminate an otherwise covered health service that the enrollee is receiving through the health plan, based upon a finding that the health service, or level of health service, is no longer medically necessary or appropriate, the issuer must continue to provide that health service until the appeal / review of adverse benefit determination is resolved? |  |
| WAC 284-43-3030(3) | Does the contract notify the enrollee that, if the resolution of the appeal, review of adverse benefit determination, or external review affirms the issuer's decision, the enrollee may be responsible for the cost of this continued health service? |  |
| RCW 48.43.530(5)(b);  WAC 284-43-3050(5);  WAC 284-43-4020(2)(d) | * The issuer must assist the enrollee with the appeal process. |  |
| RCW 48.43.530(5)(d);  WAC 284-43-4020(2)(e) | * The issuer must cooperate with any representative authorized in writing by the enrollee. |  |
| RCW 48.43.530(5)(e);  WAC 284-43-4020(2)(f);  WAC 284-43-4040(5) | * The issuer must consider all information submitted by the enrollee or representative. |  |
| RCW 48.43.530(5)(f);  WAC 284-43-4020(2)(g) | * The issuer must investigate and resolve all appeals / requests for review of adverse benefit determination. |  |
| Internal Appeals under Grand-fathered Health Plans  Internal Appeals under Grand-fathered Health Plans (Cont’d) | RCW 48.43.530(4)(a) | The review of a decision to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits, including admission to, or continued stay in, a health care facility, is called and processed as an “Appeal”. |  |
| WAC  284-43-4020(2)(c) | The issuer must:   * Respond to oral and written appeals in a timely and thorough manner. * Notify the enrollee that an appeal has been received. |  |
| WAC  284-43-4020(2)(h); | * Provide information on the enrollee's right to obtain second opinions. |  |
| WAC  284-43-4040(1) | An enrollee or the enrollee's representative, including the treating provider (regardless of whether the provider is contracted with the issuer) acting on behalf of the enrollee may appeal an adverse determination in writing.   * The issuer must reconsider the adverse determination and notify the enrollee of its decision within fourteen days of receipt of the appeal. * Issuer can extend time to complete the appeal up to a max of 30 days if it notifies the enrollee an extension is necessary; * Issuer can delay the decision beyond thirty days ONLY with the informed, written consent of the enrollee. |  |
| WAC  284-43-4040(2) | Issuer must expedite either a written or oral appeal whenever delay would jeopardize the enrollee's life or materially jeopardize the enrollee's health.   * Must issue its decision no later than seventy-two hours after receipt of the appeal. * If the treating health care provider determines that delay could jeopardize the enrollee's health or ability to regain maximum function, the issuer must presume the need for expeditious review, including the need for expedited determination in any independent review under WAC 284-43-630. |  |
| WAC  284-43-4040(4) | Appeals of adverse determinations shall be evaluated by health care providers who were not involved in the initial decision and who have appropriate expertise in the field of medicine that encompasses the enrollee's condition or disease. |  |
| WAC  284-43-4040(6) | The carrier shall issue to affected parties and to any provider acting on behalf of the enrollee a written notification of the adverse determination that includes the actual reasons for the determination, the instructions for obtaining an appeal of the carrier's decision, a written statement of the clinical rationale for the decision, and instructions for obtaining the clinical review criteria used to make the determination. |  |
| Internal Reviews of Adverse Benefit Determi-nations under Non-Grand-fathered Health Plans  Internal Reviews of Adverse Benefit Determi-nations under Non-Grand-fathered Health Plans  (Cont’d)  Internal Reviews of Adverse Benefit Determi-nations under Non-Grand-fathered Health Plans  (Cont’d)  Internal Reviews of Adverse Benefit Determi-nations under Non-Grand-fathered Health Plans  (Cont’d)  Internal Reviews of Adverse Benefit Determi-nations under Non-Grand-fathered Health Plans  (Cont’d) | WAC 284-43-3110 | Carrier’s process for review of an adverse benefit determination must include an opportunity for internal review. |  |
| 29 C.F.R.  §2560.503-1(m)(4);  RCW 48.43.530(4)(b) | The review of a decision to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits, including admission to, or continued stay in, a health care facility, is processed as a review of an adverse benefit determination. |  |
| 45 C.F.R. §147.136(a)(2)(i);  RCW 48.43.530(11);  WAC 284-43-3110(8) | A denial or rescission of coverage is subject to review of adverse benefit determination, whether or not the rescission has an adverse effect on any particular benefit at the time. |  |
| WAC 284-43-3030(4) | The issuer must accept a request for internal review of adverse benefit determination if it is received within 180 days of the enrollee’s receipt of the determination. |  |
| RCW 48.43.530(5)(a) | To process an adverse benefit determination, the issuer must:   * Provide written notice of receipt to the enrollee within 72 hours after a request for review of the adverse benefit decision is received; |  |
| WAC 284-43-3030(4);  RCW 48.43.530(5)(g) | * Provide written notice of its resolution to the enrollee and, with the permission of the enrollee, to the enrollee's providers. |  |
| WAC 284-43-3110(1) | The issuer must notify the appellant of the review decision within fourteen days of receipt of the request for review, unless the adverse benefit determination involves an experimental or investigational treatment. |  |
| WAC  284-43-3110(2) | * For good cause, an issuer may extend the time it takes to make a review determination by up to sixteen additional days without the appellant's written consent, but must notify appellant of the extension and the reason for the extension. * The issuer may request further extension of its response time only if the appellant consents to a specific request for a further extension, the consent is reduced to writing, and includes a specific agreed-upon date for determination. In its request for the appellant's consent, the issuer must explain that waiver of the response time is not compulsory. |  |
| WAC  284-43-3110(3) | * The issuer must provide the appellant with any new or additional evidence or rationale considered, whether relied upon, generated by, or at the direction of the issuer in connection with the claim. This must be provided free of charge to the appellant and sufficiently in advance of the date the notice of final internal review must be provided.   If the appellant requests an extension in order to respond to any new or additional rationale or evidence, the issuer must extend the determination date for a reasonable amount of time, which may not be less than two days. |  |
| WAC  284-43-3110(4) | The review process must provide the appellant with the opportunity to submit information, documents, written comments, records, evidence, and testimony, including those obtained through a second opinion. |  |
| WAC  284-43-3110(4) | The appellant must have the right to review the issuer's file and obtain a free copy of all documents, records, and information relevant to any claim that is the subject of the determination being appealed. |  |
| WAC  284-43-3110(5) | The internal review process must include the requirement that the issuer affirmatively review and investigate the appealed determination, and consider all information submitted by the appellant prior to issuing a determination. |  |
| WAC  284-43-3110(6) | Review of adverse determinations must be performed by health care providers or staff who were not involved in the initial decision, and who are not subordinates of the persons involved in the initial decision. If the determination involves, even in part, medical judgment, the reviewer must be or must consult with a health care professional who has appropriate training and experience in the field of medicine encompassing the appellant's condition or disease and make a determination that is within the clinical standard of care for an appellant's disease or condition. |  |
| WAC  284-43-3110(7) | The internal review process for group health plans may require two levels of internal review prior to bringing a civil action. |  |
| WAC  284-43-3050(3) | Does the contract include information about the availability of Washington's designated ombudsman's office, the services it offers, and contact information? Does the contract specifically direct appellants to the OIC's consumer protection division for assistance with questions and complaints? |  |
| WAC  284-43-3050(4)(a) | * Does the contract’s notice of the process for review of adverse benefit decisions conform to federal requirements to provide this notice in a culturally and linguistically appropriate manner to those seeking review? |  |
| WAC  284-43-3050(4)(b) | * In counties where ten percent or more of the population is literate in a specific non-English language, issuers must include in notices a prominently displayed statement in the relevant language or languages, explaining that oral assistance and a written notice in the non-English language are available upon request. |  |
| WAC  284-43-3050(4)(c) | * This requirement is satisfied if the National Commission on Quality Assurance certifies the carrier is in compliance with this standard as part of the accreditation process. |  |
| WAC  284-43-3050(5) | Contract may not contain procedures or practices that discourage an appellant from any type of adverse benefit determination review. |  |
| WAC  284-43-3050(6) | Issuer may reverse its initial adverse benefit determination at any time during the review process. In that case, issuer must provide written or electronic notification immediately, but in no event more than two business days of making the decision. |  |
| WAC  284-43-3090(2) | An issuer can provide documents related to adverse benefit determinations and review of adverse benefit determinations electronically, but ONLY IF: |  |
| WAC  284-43-3090(2)(a) | * The enrollee affirmatively consents, in electronic or non-electronic form, to receiving documents through electronic media and has not withdrawn such consent. |  |
| WAC  284-43-3090(2)(b) | * If the documents are to be furnished electronically, the appellant must have affirmatively consented or confirmed consent electronically, in a manner that reasonably demonstrates his ability to access the electronically-provided information, and must have provided an address for receipt of electronically furnished documents; |  |
| WAC  284-43-3090(2)(c)(i) | * Prior to consenting, the enrollee must be provided, in electronic or nonelectronic form, a clear and conspicuous statement indicating:   + The types of documents to which the consent would apply; |  |
| WAC  284-43-3090(2)(c)(ii) | * + That consent can be withdrawn at any time without charge; |  |
| WAC  284-43-3090(2)(c)(iii) | * + The procedures for withdrawing consent and for updating the individual's electronic address for receipt of electronically furnished documents or other information; |  |
| WAC  284-43-3090(2)(c)(iv) | * + The right to request and obtain a paper version of an electronically furnished document, including whether the paper version will be provided free of charge; and |  |
| WAC  284-43-3090(2)(c)(v) | * + Any hardware and software requirements for accessing and retaining the documents. |  |
| WAC 284-43-3090 (3) | After consent, if a change in hardware or software requirements to access or retain electronic documents creates a material risk that an enrollee will be unable to access or retain such documents, the issuer must provide information about the new requirements and the opportunity to withdraw consent without consequences. The issuer must request and receive a new consent to electronically provided documents, following such a hardware or software requirement change. |  |
| WAC 284-43-3090 (1)(c) and (d) | With respect to documents regarding adverse benefit determinations and review of such determinations, an issuer furnishing such documents electronically is deemed to satisfy the notice and disclosure requirements if:   * at the time a document is furnished electronically, the issuer provides notice (in electronic or nonelectronic form) that apprises the recipient of: * the significance of the document when it is not otherwise reasonably evident as transmitted (e.g., “the attached document describes the internal review process used by your plan”); and * The recipient’s right to request and obtain a paper version of such document; AND * The issuer furnishes the appellant or their representative with a paper version of the electronically furnished documents if requested. |  |
| Expedited Internal Reviews of Adverse Benefit Determinations under Non-Grand-Fathered Plans  Expedited Internal Reviews of Adverse Benefit Determinations under Non-Grand-  Fathered Plans  (Cont’d) | RCW 48.43.530(5)(c);  WAC 284-43-3170(1) | The Issuer must provide an expedited review process at any point in the review process IF: |  |
| WAC  284-43-3170(1)(a) | * The appellant is currently receiving or is prescribed treatment or benefits that would end due to the adverse benefit determination; OR |  |
| WAC  284-43-3170(1)(b) | * the ordering provider or the issuer's medical director reasonably determines that following the normal process response timelines could seriously jeopardize the enrollee's life, health, or ability to regain maximum function, or would subject the appellant to severe and intolerable pain; OR |  |
| WAC  284-43-3170(1)(c) | * The determination is related to an issue related to admission, availability of care, continued stay, or emergency health care services where the appellant has not been discharged from the emergency room or transport service. |  |
| WAC  284-43-3170(5) | * If the treating health care provider determines that a delay could jeopardize the enrollee's health or ability to regain maximum function, the issuer must presume the need for expedited review, and treat the review request as such, including the need for an expedited determination of an external review under RCW 48.43.535. |  |
| WAC  284-43-3170(2) | Appellant is not entitled to expedited review if the treatment has already been delivered and the review involves payment for the delivered treatment, if the situation is not urgent, or if the situation does not involve the delivery of services for an existing condition, illness, or disease. |  |
| WAC 284-43-3170;  WAC  284-43-3170(1)(b) | Does the process provide that the enrollee’s treating provider may seek expedited review on the patient’s behalf, regardless of whether the provider is contracted with the issuer? |  |
| WAC 284-43-3170(3) | An expedited review may be filed by an appellant, the appellant's authorized representative, or the appellant's provider orally, or in writing. |  |
| RCW  48.43.530(5)(c);  WAC 284-43-3170(4) | The issuer must respond as expeditiously as possible to an expedited review request, preferably within twenty-four hours, but in no case longer than seventy-two hours. The decision regarding an expedited review of adverse benefit determination must be made within 72 hours of the date the request for review is received. |  |
| WAC  284-43-3170(4)(a) | * The issuer's response to an expedited review request may be delivered orally, and must be reduced to and issued in writing not later than 72 hours after the date of the decision. Regardless of who makes the issuer's determination, the time frame for providing a response to an expedited review request begins when the issuer first receives the request. |  |
| WAC  284-43-3170(4)(b) | * If the issuer requires additional information to determine whether the service being reviewed is covered, the issuer must request such information as soon as possible after receiving the request for expedited review. |  |
| WAC 284-43-3170(6) | An issuer may require exhaustion of the internal appeal process before appellant may request external review in urgent care situations that justify expedited review. |  |
| WAC 284-43-3170(7) | Expedited review must be conducted by appropriate clinician(s) in the same or similar specialty as would typically manage the case being reviewed. The clinician(s) must not have been involved in making the initial adverse determination. |  |
| Independent Review of appeals (“IRO”) for **both** Grand-fathered and Non-Grand-fathered plans  Independent Review of appeals / (“IRO”) for **both** Grand-fathered and Non-Grand-fathered plans  (Cont’d) | 42 U.S.C.  §300gg-19(b);  RCW 48.43.535(2) | An enrollee may seek review by a certified independent review organization of an issuer's decision to deny, modify, reduce, or terminate coverage of or payment for a health care service or of any adverse determination made by a carrier under RCW [48.49.020](http://app.leg.wa.gov/RCW/default.aspx?cite=48.49.020), [48.49.030](http://app.leg.wa.gov/RCW/default.aspx?cite=48.49.030), or 42 U.S.C. Secs. 300gg-111 or 300gg-112, after exhausting the issuer's internal appeals / review of adverse benefit decision process and receiving a decision that is unfavorable to the enrollee. |  |
| RCW 48.43.535(2);  WAC 284-43-3130(1) | Enrollee may also seek review by a certified independent review organization after the carrier has exceeded the timelines provided in RCW 48.43.530, without good cause and without reaching a decision. |  |
| WAC  284-43A-140(2) | Issuers must use the rotational registry system of certified independent review organizations (IROs) established by OIC, and may not make an assignment to an IRO out of sequence for any reason other than the existence of a conflict of interest, as set forth in WAC 284-43A-050. |  |
| WAC  284-43A-140(4)(a) | * Issuers must make available to the enrollee and to any provider acting on behalf of the enrollee all materials provided to the IRO. |  |
| WAC  284-43A-140(4)(c) | * Issuers must provide IROs with all relevant clinical review criteria used by the issuer and other relevant medical, scientific, and cost-effectiveness evidence, the attending or ordering provider's recommendations, and a copy of the terms and conditions of coverage under the relevant health plan. |  |
| RCW 48.43.535(5) | Enrollees must have at least five business days to submit to the independent review organization in writing additional information that the independent review organization must consider when conducting the external review. |  |
| RCW 48.43.535(7)(a) | * An enrollee or carrier may request an expedited external review if the issuer’s decision to deny, modify, reduce, or terminate coverage or payment for a health care service:   + concerns an admission, availability of care, continued stay, or health care service for which the claimant received emergency services but has not been discharged from a facility; or   + involves a medical condition for which the standard external review time frame would seriously jeopardize the life or health of the enrollee or jeopardize the enrollee's ability to regain maximum function. |  |
| RCW 48.43.535(7)(a) | * The independent review organization must make its determination to uphold or reverse the issuer’s decision and notify the enrollee and the issuer of its determination as expeditiously as possible but within not more than seventy-two hours after the receipt of the request for expedited external review.   + If the notice is not in writing, the independent review organization must provide written confirmation of the decision within forty-eight hours after the date of the notice of the decision. |  |
| RCW 48.43.535(8) | Carriers must timely implement the certified independent review organization's determination and must pay the certified independent review organization's charges. |  |
| RCW 48.43.535(9) | When an enrollee requests independent review of an issuer's decision to modify, reduce, or terminate an otherwise covered health service that an enrollee is receiving at the time the request for review is submitted and the issuer's decision is based upon a finding that the health service, or level of health service, is no longer medically necessary or appropriate, the issuer must continue to provide the health service if requested by the enrollee until a determination is made.  If the determination affirms the issuer's decision, the enrollee may be responsible for the cost of the continued health service.  Note: Washington has demonstrated that it meets parallel process to federal external review standards, so a plan does not have to separately follow federal law. See chart: www.cms.gov/cciio/resources/files/external\_appeals.html . |  |
| Independent Review of health care disputes (“IRO”) for **Grand-fathered** plans  Independent Review of health care disputes (“IRO”) for **Grand-fathered** plans (Cont’d) | WAC 284-43-3150(5) | Appellant must be given up to 180 days following receipt of written notification of the internal review determination to file a request for external review. If external review is not requested, the internal review decision is final and binding. |  |
| RCW 48.43.535(2);  WAC 284-43-3130(1) | If the issuer fails to strictly adhere to its internal review requirements, the internal review process is deemed exhausted, and the appellant may request external review without receiving an internal review determination. |  |
| WAC 284-43-3130(2) | Issuer may challenge external review requested due to failure to adhere to requirements (either to the IRO or to a court) on the basis that the issuer’s violations are *de minimis*, and do not prejudice the appellant. |  |
| WAC  284-43-3130(2)(a) | * Exception applies only if the IRO or court determines that the issuer has demonstrated that the violation was for good cause or was due to matters beyond its control, and that the violation occurred in the context of an ongoing, good faith exchange of information between the issuer and appellant. |  |
| WAC  284-43-3130(2)(b) | * Exception is not available, and the challenge may not be sustained, if the violation is part of a pattern or practice of violations by the carrier or health plan. |  |
| WAC 284-43-3130(3) | Appellant may request a written explanation of the violation from the carrier and the carrier must provide such explanation within ten calendar days, including a specific description of its basis, if any, for asserting that the violation should not cause the internal claims and appeals process to be deemed exhausted. |  |
| WAC 284-43-3130(4) | If the challenge is successful and the IRO or court determines that the internal review process is not exhausted, the issuer must provide the appellant with notice that they may resubmit and pursue the internal appeal within a reasonable time, not to exceed ten days, of receiving the IRO’s determination, or entry of the court's final order. |  |
| External Review of Adverse Benefit Determi-nations for Non-Grand-Fathered Plans | WAC 284-43A-140(1) | Appellants must be provided the right to external review of adverse benefit determinations based on medical necessity, appropriateness, health care setting, level of care, or that the requested service or supply is not efficacious or otherwise unjustified under evidence-based medical criteria. Issuer may not establish a minimum dollar amount requirement for an appellant to seek external independent review. |  |
| WAC  284-43A-140(4)(b) | IRO review must be provided without imposing any cost to the appellant or their provider. |  |
| WAC  284-43A-140(4)(d) | Within one day of selecting the IRO, the issuer must notify the appellant of the name of the IRO and its contact information.  The notice must explain that the IRO will accept additional information in writing from the appellant for up to five business days after it receives the assignment, which the IRO must consider when conducting its review. |  |
| WAC 284-43A-140(5) | An issuer may waive a requirement that internal appeals must be exhausted before an appellant may proceed to independent review of an adverse determination. |  |
| WAC 284-43A-140(6) | Upon receipt of this information provided by the appellant to the IRO, an issuer may reverse its final internal adverse determination. If it does so, it must immediately notify the IRO and the appellant. |  |
| Concurrent Expedited Review of Adverse Benefit Determin-ations for Non-Grand-Fathered Plans | WAC 284-43-3190(1) | Issuer must offer the right to request concurrent expedited internal and external review of adverse benefit determinations.   * "Concurrent expedited review" means initiation of both the internal and external expedited review simultaneously. This is review of either utilization review decisions or treatment decisions during a patient's stay or course of treatment in an inpatient or outpatient health care setting so that the final adverse benefit determination is reached as expeditiously as possible. |  |
| WAC 284-43-3190(2) | When concurrent expedited review is requested, issuer may not make the determinations consecutively. The requisite timelines must be applied concurrently. |  |
| WAC 284-43-3190(3) | Issuer may deny a request for concurrent expedited review only if the conditions for expedited review are not met. Issuer may not require exhaustion of internal review if an appellant requests concurrent expedited review. |  |
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| **Applications** | Fraud Statement | RCW 48.135.080 | All applications must contain a statement to the following: “It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefits.” |  |
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| **Clinical Trials** | Require- ments for Coverage | WAC 284-43-5420 | * Plan must not restrict coverage of routine patient costs for enrollees who participate in a clinical trial. |  |
|  |  | WAC 284-43-5420 | * + "Routine costs" means items and services that are consistent with and typically covered by the plan for an enrollee who is not enrolled in a clinical trial. |  |
|  |  | WAC 284-43-5420 | * Plan may apply limitations and requirements related to use of network services. |  |
|  |  | WAC 284-43-5420(1) | * Plan may require enrollees to meet eligibility requirements of the clinical trial protocol, including medical and scientific information establishing that the enrollee meets the requirements, unless the enrollee is referred to the clinical trial by an in-network provider. |  |
|  |  | WAC 284-43-5420(2) | * Plan must cover the cost of prescription medication used for direct clinical management of the enrollee, unless the trial is for the investigation of the medication or the medication is typically provided free by the research sponsors for anyone in the trial. |  |
|  |  | WAC 284-43-5420(3)(a) | * Exceptions: The requirement does not apply to:   + A service that is clearly inconsistent with widely accepted and established standards of care for a particular diagnosis; |  |
| **Clinical Trials** | Require- ments for Coverage | WAC 284-43-5420(3)(b) | * + Items and services provided solely to satisfy data collection and analysis needs; |  |
|  | WAC 284-43-5420(3)(c) and (d) | * + Items and services that are not used in the direct clinical management of the enrollee; or   + The investigational item, device, or service itself. |  |
|  |  | WAC 284-43-5420(4)  WAC 284-43-5420(4)(a) | * “Clinical trial” means a phase I, II, III, or IV clinical trial conducted in relation to the prevention, detection, or treatment of cancer or other life-threatening disease or condition, funded or approved by:   + One of the National Institutes of Health (NIH); |  |
|  |  | WAC 284-43-5420(4)(b) | * + An NIH cooperative group or center which is a formal network of facilities that collaborate on research projects and have an established NIH-approved peer review program including, but not limited to, the NCI Clinical Cooperative Group and the NCI Community Clinical Oncology Program; |  |
|  |  | WAC 284-43-5420(4)(c) | * + The federal Departments of Veterans Affairs or Defense; |  |
|  |  | WAC 284-43-5420(4)(d) | * + An institutional review board of an institution in this state that has a multiple project assurance contract approval by the Office of Protection for the Research Risks of the NIH; or |  |
|  |  | WAC 284-43-5420(4)(e) | * + A qualified research entity that meets the criteria for NIH Center Support Grant eligibility. |  |
|  |  | WAC 284-43-5420 (4)(e) | * "Life threatening condition" means any disease or condition from which the likelihood of death is probable unless the course of the disease or condition is interrupted. |  |
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| **Colorectal Cancer Exams and Lab Tests**  **Colorectal Cancer Exams and Lab Tests**  **(Cont’d)** |  | [**ESHB 1957**](https://app.leg.wa.gov/billsummary?BillNumber=1957&Initiative=false&Year=2023); RCW 48.43.043(1) | Does the plan cover colorectal cancer examinations and laboratory tests consistent with the guidelines or recommendations of the United States preventive services task force or the federal centers for disease control and prevention? Benefits or coverage must be provided: |  |
| RCW 48.43.043(1)(a) | * For any of the colorectal screening examinations and tests in the selected guidelines or recommendations, at a frequency identified in such guidelines or recommendations, as deemed appropriate by the patient's physician after consultation with the patient; and |  |
| [**ESHB 1957**](https://app.leg.wa.gov/billsummary?BillNumber=1957&Initiative=false&Year=2023)**;** 45 CFR  §147.130 (a)(1)(i); RCW 48.43.043(1)(b) | * To a covered individual who is:   + At least forty-five years old; or   + Less than fifty years old and at high risk or very high risk for colorectal cancer according to such guidelines or recommendations. |  |
| RCW 48.43.043(2) | Enrollees and providers must not be required to meet burdensome criteria or overcome significant obstacles to secure such coverage.   * Additional deductible or coinsurance for testing cannot be greater than an annual deductible or coinsurance established for similar benefits. If no similar benefit, deductible or coinsurance may not be set at a level that materially diminishes the value of the colorectal cancer benefit required. |  |
| RCW 48.43.043(3)(a) | * Issuer is not required to provide for a referral to a nonparticipating health care provider, unless the carrier does not have an appropriate, available in-network provider. |  |
| RCW 48.43.043(3)(b) | * If issuer does refer to a nonparticipating provider, screening exam services or resulting treatment, if any, must be provided at in-network cost. |  |
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| **Congenital**  **Anomalies** |  | RCW 48.44.212(1) | Must provide coverage for newborn infants of the insured or covered group member from and after the moment of birth. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies of such infant children from the moment of birth. |  |
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| **Continuation of Care During Enrollee Absence** | Family Medical Leave Act (“FMLA”) | 29 CFR §825 | Does the contract contain proper notification to the enrollee regarding medical coverage status during a period of leave under FMLA? |  |
| Labor  Dispute | RCW 48.44.250 | Does the contract inform enrollees about, and is it consistent with labor dispute continuation provisions?   * Six month continuation period required for employee to directly pay premiums * Applies whether employer pays all or part of premium * All three actions – strike, lockout, other labor dispute – must appear in description of provision * Contract may not be changed during this period. * After six months, if the employee’s plan is no longer available, the employee must be given an opportunity to purchase an individual contract at the rate filed with OIC. |  |
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| **Continuation Options Upon Termination**  **Continuation Options Upon Termination**  **(Cont’d)** | Consolidated Omnibus Budget Reconciliation Act  (“COBRA”) | COBRA  29 U.S.C. §1161;  RCW 48.44.400  26 C.F.R. 54.4980B-7 A-4(c) | Does the contract contain continuation of coverage language in compliance with federal law?   * Employees, spouses, and dependents who lose coverage may continue coverage up to 18 months if employment is terminated or reduction in hours of full time employment (other than for gross misconduct), or bankruptcy of a retiree plan |  |
| 26 C.F.R.  54.4980B-8 | * Enrollee pays premium |  |
| 26 C.F.R.  54.4980B-7  A-4(a) | * Spouse and dependent children may continue up to 36 months if: |  |
| 26 C.F.R.  54.4980B-4  A-1 (b) | * Coverage lost because of employee’s death * Divorce or legal separation from employee * Dependent children no longer meet Plan’s eligibility requirements (e.g., no longer eligible due to age) * Employee becomes eligible for Medicare and ceases to participate in plan |  |
| Mandated offering - Continuation of Coverage | RCW 48.44.360 | Did the issuer offer the employer an option to include a contract provision granting a person who becomes ineligible for coverage under the group contract the right to continue the group benefits for a period of time at a rate agreed upon?   * The contract provision must provide that when such coverage terminates, the covered person may convert to a conversion plan. |  |
| Conversion  Offered  Conversion  Offered  (Cont’d) | RCW 48.44.370(1) | Does the contract provide notice of the right to convert to a conversion contract upon termination from the group contract? |  |
| RCW 48.44.370  (3)and(4) | To obtain conversion plan, must submit application and 1st months premium within 31 days after later of:   * termination of eligibility for group coverage or * 31 days after person received notice of termination of coverage (unless conversion requirement satisfied by notifying enrollees of option to purchase on Exchange, then follow special enrollment rules.) |  |
| RCW 48.44.370(2)(a) | Need not offer to:   * employee terminated for misconduct |  |
| RCW 48.44.370(2)(b) | * person eligible for Medicare |  |
| RCW 48.44.370(2)(c) | * person covered under another group hospital or medical plan |  |
| WAC  284-52-020(1) | Does the HCSC have on file and approved at least three conversion contracts with the OIC? (This can be satisfied by directing enrollees to the Exchange. Conversion plans are considered individual plans under the ACA.) |  |
| RCW 48.44.370(3);  RCW 48.44.370(2)(a) | Does the conversion option provide continuous coverage, without a lapse?   * Does the contract reflect that in the event an employee is denied a conversion contract due to misconduct, his or her spouse and dependents must be offered a conversion contract? |  |
| RCW 48.44.370(4) | If HCSC or group contract holder does not renew, cancels or otherwise terminates group contract, HCSC must offer conversion contract to anyone who was covered, unless the person is eligible to obtain group hospital or medical expense coverage within 31 days after the termination or 31 days after received notice of termination, whichever is later. |  |
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| **Contract Examination and Standards**  **Contract Examination and Standards**  **(Cont’d)**  **Contract Examination and Standards**  **(Cont’d)**  **Contract Examination and Standards**  **(Cont’d)** | Rate and Form Filing Instructions | WAC 284-44A-040 | Filing must comply with the SERFF Industry Manual and Washington State SERFF Health and Disability Form Filing General Instructions. |  |
| Examination/ Disapproval | RCW  48.44.020(2)(a);  RCW 48.44.020(2)(b);  RCW  48.44.020(2)(d); RCW  48.44.020(2)(e): RCW 48.44.020(3)(f) | Review for any inconsistent, ambiguous or misleading clauses, or exceptions and conditions, which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the contract.   * Cannot contain any title, heading, or other indication of provisions which is misleading * May not unreasonably restrict treatment or services * Benefits must be reasonable in relation to the amount charged for the contract * Cannot violate or fail to conform to minimum provisions or standards required by the commissioner by rule under chapter [34.05](http://app.leg.wa.gov/RCW/default.aspx?cite=34.05) RCW; or * If any agreement for health care services with any state agency, division, subdivision, board, or commission or with any political subdivision, municipal corporation, or quasi-municipal corporation fails to comply with state law. |  |
| RCW 48.44.020(3) | The commissioner may disapprove any agreement if the benefits provided therein are unreasonable in relation to the amount charged for the agreement. |  |
|  | RCW  48.44.010;  RCW 48.43.005 | Definitions in the contract must be consistent with those in RCW 48.43.005 and RCW 48.44.010. |  |
|  | WAC  284-44-030 (2) | Does the contract or certificate of coverage contain a listing of exclusions, reductions, and limitations to covered benefits either included with the benefit provisions, or under an appropriate caption?   * Is any exclusion, reduction, or limitation which applies only to a particular benefit Included with the applicable benefit provision? |  |
| Injury due to Intoxication or Narcotics | RCW 48.44.305 | Plan may not deny coverage for treatment of an injury solely because the injury was sustained as a consequence of the enrolled participant’s being intoxicated or under the influence of a narcotic. |  |
| Right to legal or arbitration proceedings | WAC  284-44-040(3) | A contract must not contain any provision which gives or purports to give the Issuer or its designee the authority to make a final or binding decision relative to the contract, or coverage thereunder. An enrollee must not be denied the right to have a controversy determined by legal or arbitration proceedings. |  |
| Required Format | WAC  284-44-030(1) | The style, arrangement, and over-all appearance of the contract must give no undue prominence to any portion of the text   * Is the type of a general style? * Is the font size uniform, and not less than 8 point font size? * “Text” means all printed matter except the name and address of the HCSC, name or title of the policy, a brief description (if any), and captions and subcaptions |  |
| WAC  284-44-030(3) | Each form, including riders and endorsements, shall be identified by a form number in the lower left hand corner of the first page thereof. |  |
| WAC  284-44-030(4) | The contract must contain no provision purporting to make any portion of the HCSC charter, rules, bylaws, etc. a part of the contract that would limit its terms, unless attached to, or set forth in full in, the contract. |  |
| Required  Standards  Required  Standards (Cont’d) | WAC  284-44-040(1) | The contract cannot unreasonably limit benefits to a specified period of time. |  |
| WAC  284-44-040(2) | A contract must provide that reasonable benefits will be restored upon each renewal of the contract or upon a calendar year basis, or will be reasonably continuous. |  |
| WAC  284-44-040(4) | A contract must not require an enrollee to pay any special charge, distinct from the premium, deductibles, and cost sharing, in order to obtain advance authorization for treatment or services. |  |
| WAC  284-44-040(5) | If the contract restricts treatment to services by the Issuer's contracted providers or agents, does it include a reasonable provision for emergency treatment to be allowed consistent with the scope of the benefits regularly provided by the contract? |  |
| WAC 284-44-040(6) | If the contract provides maternity benefits, there must be no waiting period for maternity benefits in advance of a conception occurring while the contract is in force. |  |
| WAC  284-44-040(7) | The contract must not contain any provision that unreasonably restricts or delays the payment of benefits payable under the contract. Delays are not justified because the expenses incurred, or the services received, resulted from an act or omission of a third party. |  |
| WAC  284-44-040(8) | Does the contract provide for a grace period of not less than ten days following the due date for the payment of the enrollee’s premium?   * If payment is not made within the grace period, the contract may be terminated as of the due date of payment rather than at the end of the grace period. |  |
| WAC 284-43-5800(3) | An issuer may use reasonable medical management techniques to control costs, including promoting the use of appropriate, high-value preventive services, providers and settings.  Plan must permit waiver of an otherwise applicable copayment for a service that is tied to one setting but not the preferred high-value setting if the enrollee’s provider determines that it would be medically inappropriate to have the service provided in the lower value setting. Issuer may still apply applicable in-network requirements. |  |
| Discretionary Clauses  Prohibited | WAC 284-44-040(3) | * Contract must not purport to give the HCSC or any designee authority to make a decision on the contract, or coverage or claims thereunder, which is final and binding on the enrollee. |  |
| WAC 284-44-015(1) | * Contract may not contain a “discretionary clause” that purports to reserve discretion to a carrier or its designees to interpret the contract or decide eligibility for benefits, or requires deference to such interpretations or decisions. |  |
|  | WAC 284-44-015(1)a) | * + That the carrier’s interpretation of the terms of the contract is binding; |  |
|  | WAC 284-44-015(1)(b) | * + That the carrier’s decision regarding eligibility or continued receipt of benefits is binding; |  |
|  | WAC 284-44-015(1)(fittc) | * + That the carrier’s decision to deny, modify, reduce or terminate payment, coverage, authorization, or provision of health care service or benefits, is binding; |  |
|  | WAC 284-44-015(1)(d) | * + That there is no appeal or judicial remedy from a denial of a claim; |  |
|  | WAC 284-44-015(1)(e) | * + That deference must be given to the carrier’s interpretation of the contract or claim decision; and |  |
|  | WAC 284-44-015(1)(f) | * + That the standard of review of a carrier’s interpretation of the contract or claim decision is other than a de novo review. |  |
|  | WAC 284-44-015(2) | * Contract may include provisions that inform enrollees that, as part of its routine operations, the carrier applies the terms of its contracts for making decisions, including determinations regarding eligibility, receipt of benefits and claims, or explaining its policies, procedures, and processes. |  |
| Spouse includes state registered domestic partner | RCW 48.43.904; RCW 48.30.300 | Washington state-registered domestic partners must be extended the same rights under insurance contracts as spouses. All terms and benefits of the plan must be provided equally to spouses and state-registered domestic partners. For plans issued in Washington, the amount of benefits payable, or any term, rate, condition, or type of coverage may not be restricted, modified, excluded, increased, or reduced on the basis of the sex, marital status, or sexual orientation. This includes any benefits under COBRA, USERRA, and FMLA. |  |
| Cancellation | WAC 284-44-310(1)(a) | The contract must:   * Have a continuous term; * Fully insure the benefits of the persons who have paid for or contracted for covered health care services, which persons shall be designated as beneficiaries, when such services are not performed by the health care services contractor or a participant; * Contain a provision that, in the event of cancellation, the coverage shall continue with respect to services provided prior to the effective date of cancellation; * Contain a provision that it may not be cancelled without ninety days advance written notice to the insured or issuer by the cancelling party; and * Contain a provision requiring not less than sixty days advance notice to the insurance commissioner, health care services division, by the issuer of any cancellation. |  |
| WAC 284-44-310(1)(b) |
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| WAC 284-44-310(1)(c) |
| WAC 284-44-310(1)(d) |
| WAC 284-44-310(1)(e) |
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| **Coordination of Benefits** | Disclosure of Coordination |  | **Please note which COB Model is used and proceed to the required COB elements.**  **Model A or Model B** |  |
| **Coordination**  **of Benefits**  **(Cont’d)**  **Coordination**  **of Benefits**  **(Cont’d)**  **Coordination**  **of Benefits**  **(Cont’d)**  **Coordination of Benefits**  **(Cont’d)**  **Coordination of Benefits**  **(Cont’d)**  **Coordination of Benefits**  **(Cont’d)**  **Coordination of Benefits**  **(Cont’d)**  **Coordination of Benefits**  **(Cont’d)**  **Coordination of Benefits**  **(Cont’d)** | Use of Model COB Provisions | WAC 284-51-200 | Each certificate of coverage under a contract that provides for COB must contain a description of the COB provisions.   * Does the contract use the model COB provisions in WAC 284-51-255 Appendix A? **OR** * Does the contract use the model “plain language description” of COB in WAC 284-51-260, Appendix B? |  |
| General | WAC  284-51-200(3) | Issuers need not use the specific words and format provided in WAC [284-51-255](http://apps.leg.wa.gov/wac/default.aspx?cite=284-51-255) and the plain language explanation in WAC [284-51-260](http://apps.leg.wa.gov/wac/default.aspx?cite=284-51-260). Editing changes may be made by the issuer to fit the language and style of the rest of its contract or to reflect differences among plans that provide services, that pay benefits for expenses incurred, and that indemnify. Modifications may be made provided they do not conflict with the requirements of this chapter. |  |
| WAC  284-51-200 (4) | A COB provision may not be used that permits a plan to reduce its benefits on the basis that:   * Another plan exists and the covered person did not enroll in that plan; * A person could have been covered under another plan; or * A person has elected an option under another plan providing a lower level of benefits than another option that could have been elected. |  |
| WAC 284-51-200(5) | No plan may contain a provision that its benefits are "always excess" or "always secondary" except under the rules permitted in Chapter 284-51 WAC. |  |
| RCW 48.21.200(1) (Note: by its terms, this statute applies to HCSCs) | A carrier may not administer COB in a way that reduces total benefits payable below an amount equal to 100% of total allowable expenses. |  |
| WAC  284-51-230(1) | When coordinating benefits, any secondary plans must pay an amount which, together with the payment made by the primary plan, cannot be less than the same allowable expense as the secondary plan would have paid if it was the primary plan. In no event will a secondary plan be required to pay an amount in excess of its maximum benefit plus accrued savings. |  |
| WAC  284-51-195(1) | When Medicare, Part A, Part B, Part C, or Part D is primary, Medicare's allowable amount is the allowable expense. |  |
| Time Limit | WAC  284-51-215(1) | No issuer shall unreasonably delay payment of a claim by reason of the application of a COB provision. Any time limit in excess of 30 days is unreasonable. |  |
| Definition of “Plan” for purposes of COB  Definition of “Plan for purposes of COB  (Cont’d) | WAC  284-51-195(12) | "Plan" means a form of coverage with which coordination is allowed. Separate parts of a plan that are provided through alternative contracts that are intended to be part of a coordinated package of benefits are considered one plan and there is no COB among the separate parts of the plan. |  |
| WAC  284-51-195(12)(a) | * If a plan coordinates benefits, its contract must state the types of coverage that will be considered in applying the COB provision of that contract. Whether the contract uses the term "plan" or some other term such as "program," the contractual definition may be no broader than this definition. |  |
| WAC  284-51-195(12)(b) | No plan may use a COB provision, or any other provision that allows it to reduce its benefits with respect to any other coverage its insured may have that does not meet the definition of plan as defined in Chapter 284-51 WAC. |  |
| WAC  284-51-195(12)(b)(i) | "Plan" includes:   * Group, individual or blanket disability insurance contracts, and group or individual contracts marketed by issuers; |  |
| WAC  284-51-195(12)(b)(ii) | * Closed panel plans or other forms of group or individual coverage; |  |
| WAC  284-51-195(12)(b)(iii) | * The medical care components of long-term care contracts, such as skilled nursing care; and |  |
| WAC  284-51-195(12)(b)(iv) | * Medicare or other governmental benefits, as permitted by law. That part of the definition of plan may be limited to the hospital, medical and surgical benefits of the governmental program. |  |
| WAC  284-51-195(12)(c)(i) | "Plan" does not include:   * Hospital indemnity or fixed payment coverage benefits or other fixed indemnity or payment coverage; |  |
| WAC  284-51-195(12)(c)(ii) | * Accident only coverage; |  |
| WAC  284-51-195(12)(c)(iii) | * Specified disease or specified accident coverage; |  |
| WAC  284-51-195(12)(c)(iv) | * Limited benefit health coverage, as defined in WAC [284-50-370](http://apps.leg.wa.gov/wac/default.aspx?cite=284-50-370); |  |
| WAC  284-51-195(12)(c)(v) | * School accident and similar coverages that cover students for accidents only, including athletic injuries, either on a twenty-four-hour basis or on a "to and from school" basis; |  |
| WAC  284-51-195(12)(c)(vi) | * Benefits provided in long-term care insurance policies for nonmedical services, for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care and custodial care or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services; |  |
| WAC  284-51-195(12)(c)(vii) | * Medicare supplement policies; |  |
| WAC  284-51-195(12)(c)(ix) | * A state plan under Medicaid; |  |
| WAC  284-51-195(12)(c)(x) | * A governmental plan, which, by law, provides benefits that are in excess of those of any private insurance plan or other nongovernmental plan; |  |
| WAC  284-51-195(12)(c)(xi) | * Automobile insurance policies required by statute to provide medical benefits; |  |
| WAC  284-51-195(12)(c)(xii) | * Benefits provided as part of a direct agreement with a direct patient-provider primary care practice as defined at section 3, chapter 267, Laws of 2007. |  |
| Contract description of COB | WAC  284-51-200(7) | If a person has met the requirements for coverage under the primary plan, a closed panel plan in secondary position must pay benefits as if the covered person had met the requirements of the closed panel plan. Further, coordination of benefits may occur during the claim determination period even where there are no savings in the closed panel plan. |  |
| WAC  284-51-195(5) | "Closed panel plan" means a plan that provides health benefits to covered persons in the form of services primarily through a panel of providers that are employed by the plan, and that excludes benefits for services provided by other providers, except in cases of emergency or referral by a panel member. |  |
| Rules for Coordination of Benefits  Rules for Coordination of Benefits (Cont’d)  Rules for Coordination of Benefits (Cont’d)  Rules for Coordination of Benefits (Cont’d)  Rules for Coordination of Benefits (Cont’d) | WAC 284-51-205 | Does the contract contain any provisions that are inconsistent with or less favorable than these COB rules? |  |
| WAC  284-51-205(1)(a) | * The primary plan must pay or provide its benefits as if the secondary plan or plans did not exist. A plan may take into consideration the benefits paid or provided by another plan only when, under the COB rules, it is secondary to that other plan. |  |
| WAC  284-51-205 (1)(b) | * If the primary plan is a closed panel plan and the secondary plan is not a closed panel plan, the secondary plan must pay or provide benefits as if it were the primary plan when a covered person uses a nonpanel provider, except for emergency services or authorized referrals that are paid or provided by the primary plan. |  |
| WAC  284-51-205 (1)(c) | * When multiple contracts providing coordinated coverage are treated as a single plan per WAC 284-51-195, the COB rules apply only to the plan as a whole, and coordination among the component contracts is governed by the terms of the contracts. If more than one issuer pays or provides benefits under the plan, the issuer designated as primary within the plan is responsible for the plan's compliance with this chapter. |  |
| WAC  284-51-205 (1)(d) | * If a person is covered by more than one secondary plan, the order of benefit determination rules decide the order in which secondary plans' benefits are determined in relation to each other. Each secondary plan must take into consideration the benefits of the primary plan or plans and the benefits of any other plan, which, under the COB rules, has its benefits determined before those of that secondary plan. |  |
| WAC  284-51-205 (2)(a) | Except as provided below, a plan that contains noncompliant COB provisions is always the primary plan unless the provisions of both plans state that the complying plan is primary. |  |
| WAC  284-51-245 (2)(a) | * A plan with order of benefit determination rules that comply with the WAC rules (complying plan) may coordinate its benefits with a plan that is "excess" or "always secondary" ,or that uses order of benefit determination rules that are inconsistent with the WAC rules (noncomplying plan) on the following basis: |  |
| WAC  284-51-245 (2)(a)(i) | * + If the complying plan is the primary plan, it must pay or provide its benefits first; |  |
| WAC  284-51-245 (2)(a)(ii) | * + If the complying plan is the secondary plan under the order of benefit determination WACs, it must pay or provide its benefits first, but the amount of the benefits payable must be determined as if the complying plan were the secondary plan. In this situation, the payment is the limit of the complying plan's liability; and |  |
| WAC  284-51-245 (2)(a)(iii) | * + If the noncomplying plan does not provide the information needed by the complying plan to determine its benefits within forty-five days after the date on the letter making the request, the complying plan may assume the benefits of the noncomplying plan are identical to its own, and pay its benefits accordingly. If, within twenty-four months after payment, the complying plan receives information as to the actual benefits of the noncomplying plan, it must adjust payments accordingly between the plans. |  |
| WAC  284-51-245 (2)(b) | * If the noncomplying plan reduces its benefits so that the covered person receives less in benefits than the covered person would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan, and governing state law allows the right of subrogation outlined below, then the complying plan may advance to the covered person or on behalf of the covered person an amount equal to the difference. |  |
| WAC  284-51-245 (2)(c) | * In no event may the complying plan advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid for the same expense or service. In consideration of the advance, the complying plan is subrogated to all rights of the covered person against the noncomplying plan. The advance by the complying plan must be without prejudice to any claim it may have against a noncomplying plan in the absence of subrogation. |  |
| WAC  284-51-205 (2)(b) | * Coverage that is obtained by virtue of membership in a group and designed to supplement a part of a basic package of benefits may provide that the supplementary coverage is excess to any other parts of the plan provided by the contract holder. (e.g., major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance coverages that are written in connection with a closed panel plan to provide out-of-network benefits.) |  |
| WAC 284-51-205(4) | Order of benefit determination. Each plan determines its order of benefits using the first of the following rules that applies: |  |
| WAC  284-51-205 (4)(a)(i) | * Nondependent or dependent. * Subject to the following, the plan that covers the person other than as a dependent (e.g., as an employee, member, subscriber, policyholder or retiree) is the primary plan and the plan that covers the person as a dependent is the secondary plan. |  |
| WAC  284-51-205 (4)(a)(ii) | * If the person is a Medicare beneficiary, and, as a result of the provisions of Title XVIII of the Social Security Act and implementing regulations, Medicare is: * Secondary to the plan covering the person as a dependent; and * Primary to the plan covering the person as other than a dependent (e.g., a retired employee); * Then the order of benefits is reversed so that the plan covering the person as an employee, member, subscriber, policyholder or retiree is the secondary plan and the other plan covering the person as a dependent is the primary plan. |  |
| WAC  284-51-205(4)(b) | * Dependent child covered under more than one plan. Unless there is a court decree stating otherwise, plans covering a dependent child must determine the order of benefits as follows: |  |
| WAC  284-51-205(4)(b)(i) | * + For a dependent child whose parents are married or are living together, whether or not they have ever been married: |  |
| WAC 284-51-205 (4)(b)(i)(A) | * + - The plan of the parent whose birthday falls earlier in the calendar year is the primary plan; or |  |
| WAC 284-51-205 (4)(b)(i)(B) | * + - If both parents have the same birthday, the plan that has covered the parent longest is the primary plan. |  |
| WAC  284-51-205 (4)(b)(ii) | * + For a dependent child whose parents are divorced or separated or are not living together, whether or not they have ever been married: |  |
| WAC  284-51-205 (4)(b)(ii)(A) | * + - If a court decree states that one of the parents is responsible for the dependent child's health care expenses or health care coverage and the plan of that parent has actual knowledge of those terms, that plan is primary. If the parent with responsibility has no health care coverage for the dependent child's health care expenses, but that parent's spouse does, that parent's spouse's plan is the primary plan. This does not apply to any plan year during which benefits are paid or provided before the plan has actual knowledge of the court decree provision; |  |
| WAC  284-51-205 (4)(b)(ii)(B) | * + - If a court decree states one parent is to assume primary financial responsibility for the dependent child but does not mention responsibility for health care expenses, the plan of the parent assuming financial responsibility is primary; |  |
| WAC  284-51-205 (4)(b)(ii)(C) | * + - If a court decree states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions above for parents married or living together determine the order of benefits |  |
| WAC  284-51-205 (4)(b)(ii)(D) | * + - If a court decree states that the parents have joint custody without specifying that one parent has financial responsibility or responsibility for the health care expenses or health care coverage of the dependent child, the above provisions for parents married or living together determine the order of benefits; or |  |
| WAC  284-51-205 (4)(b)(ii)(E) | * + - If there is no court decree allocating responsibility for the child's health care expenses or health care coverage, the order of benefits for the child is as follows: |  |
| (I) | * + - * The plan covering the custodial parent, first; |  |
| (II) | * + - * The plan covering the custodial parent's spouse, second; |  |
| (III) | * + - * The plan covering the noncustodial parent, third; and then |  |
| (IV) | * + - * The plan covering the noncustodial parent's spouse, last. |  |
| WAC  284-51-205(4)(b)(iii) | * + For a dependent child covered under more than one plan of individuals who are not the parents of the child, the order of benefits is determined as if those individuals were parents of the child. |  |
| WAC  284-51-205(4)(c)(i) | * + Active employee or retired or laid-off employee.   + The plan that covers a person as an active employee (an employee who is neither laid off nor retired) or as a dependent of an active employee is the primary plan. The plan covering that same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee is the secondary plan. |  |
| WAC  284-51-205(4)(c)(ii) | * + If the other plan does not have this rule, and as a result, the plans do not agree on the order of benefits, this rule does not apply. |  |
| WAC  284-51-205(4)(c)(iii) | * + This provision also does not apply if the above provisions regarding nondependents and dependents can determine the order of benefits. |  |
| WAC  284-51-205(4)(d)(i) | * + COBRA or state continuation coverage     - If a person has coverage provided under COBRA or under a right of continuation under state or federal law, and is covered under another plan, the plan covering him as an employee, member, subscriber or retiree or covering him as a dependent of one of these, is the primary plan and the plan covering that same person under COBRA or under a right of continuation according to state or other federal law is the secondary plan. |  |
| WAC  284-51-205(4)(d)(ii) | * + If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this rule does not apply. |  |
| WAC  284-51-205(4)(d)(ii) | * + This provision also does not apply if the above provisions regarding nondependents and dependents in (a) of this subsection can determine the order of benefits. |  |
| WAC  284-51-205(4)(e)(i) | * + Longer or shorter length of coverage   + If the preceding rules do not determine the order of benefits, the plan that covered the person for the longer period of time is the primary plan and the plan that covered the person for the shorter period of time is the secondary plan. |  |
| WAC  284-51-205(4)(e)(ii) | * + To determine the length of time a person has been covered under a plan, two successive plans are treated as one if the covered person was eligible under the second plan within twenty-four hours after coverage under the first plan ended. |  |
| WAC 284-51-205(4)(e)(iii) | * + The start of a new plan does not include: |  |
| (A) | * + - A change in the amount or scope of a plan's benefits; |  |
| (B) | * + - A change in the entity that pays, provides or administers the plan's benefits; or |  |
| (C) | * + - A change from one type of plan to another, such as, from a single employer plan to a multiple employer plan. |  |
| WAC  284-51-205(4)(e)(iv) | * + The person's length of time covered under a plan is measured from the person's first date of coverage under that plan. If that date is not readily available for a group plan, the date the person first became a member of the group must be used as the date to determine the length of time the person's coverage under the present plan has been in force. |  |
| WAC  284-51-205(4)(f) | * If none of the preceding rules determines the order of benefits, the allowable expenses must be shared equally between the plans. |  |
| Rules for Secondary Plan Payment | WAC 284-51-230(1) | In determining the amount to be paid by the secondary plan if the plan wishes to coordinate benefits, the secondary plan must pay in an amount so that, when combined with the amount paid by the primary plan, the total benefits paid by all plans equal one hundred percent of the total allowable expense for that claim. However, in no event shall the secondary carrier be required to pay an amount in excess of its maximum benefit plus accrued savings. In no event should the enrollee be responsible for a deductible amount greater than the highest of the two deductibles. |  |
| WAC 284-51-230(3) | “Gatekeeper requirements” means any requirement that an otherwise eligible person must fulfill prior to receiving the benefits of a plan. (e.g, use of network providers, prior authorization, primary care physician referrals, or other similar case management requirements.) If a plan by its terms contains gatekeeper requirements, AND a person fails to comply with such requirements, And an alternative procedure is not agreed upon between both plans and the covered person: |  |
| WAC  284-51-230(2)(a) | * If the plan is secondary, all secondary gatekeeper requirements will be waived if the gatekeeper requirements of the primary plan have been met. |  |
| WAC  284-51-230(2)(b) | * If the primary plan becomes secondary during a course of treatment, the new primary plan must make reasonable provision for continuity of care if one or more treating providers are not in the new primary plan's network. |  |
| WAC  284-51-230(4) | When a plan is secondary, it may reduce its benefits so that the total benefits paid or provided by all plans during a claim determination period do not exceed one hundred percent of the total allowable expenses. The secondary plan must calculate and record its savings from the amount it would have paid had it been primary, and must use these savings to pay any allowable expenses not otherwise paid, that are incurred by the covered person during the claim determination period, so that one hundred percent of the total allowable expenses incurred are paid during the claim determination period. |  |
| **Required Provisions:**  **“Facility of Payment”** | WAC 284-51-220 | If the plan provides for COB, does it contain provisions substantially as follows?   * **SKIP IF USING MODEL A LANGUAGE IN THE PLAN.** "If payments that should have been made under this plan are made by another plan, the issuer has the right, at its discretion, to remit to the other plan the amount it determines appropriate to satisfy the intent of this provision. To the extent of such payments, the issuer is fully discharged from liability under this plan." |  |
| **“Right of Recovery”** | WAC 284-51-225 | **SKIP IF USING MODEL A LANGUAGE IN THE PLAN.** "The issuer has the right to recover excess payment whenever it has paid allowable expenses in excess of the maximum amount of payment necessary to satisfy the intent of this provision. The issuer may recover excess payment from any person, other issuer or plan that has received payment. |  |
| **“Notice to Covered Persons”** | WAC 284-51-235 | A plan must include the following statement in the enrollee contract or booklet provided to covered persons:   * "If you are covered by more than one health benefit plan, and you do not know which is your primary plan, you or your provider should contact any one of the health plans to verify which plan is primary. The health plan you contact is responsible for working with the other plan to determine which is primary and will let you know within thirty calendar days.   **CAUTION:** All health plans have timely claim filing requirements. If you or your provider fail to submit your claim to a secondary health plan within that plan's claim filing time limit, the plan can deny the claim. If you experience delays in the processing of your claim by the primary health plan, you or your provider will need to submit your claim to the secondary health plan within its claim filing time limit to prevent a denial of the claim. To avoid delays in claims processing, if you are covered by more than one plan you should promptly report to your providers and plans any changes in your coverage." |  |
| If Plans Cannot Agree Which is Primary | WAC 284-51-245(4) | If the plans cannot agree on the order of benefits within thirty calendar days after the plans have received the information needed to pay the claim, the plans must immediately pay the claim in equal shares and determine their relative liabilities following payment. No plan is required to pay more than it would have paid had it been the primary plan. |  |
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| **Cost-Sharing Protections**  **(Non-Grand-fathered Plans only unless stated otherwise)**  **Cost-Sharing Protections (Grand-fathered and non-Grand-fathered plans)**  **(Cont’d)**  **Cost-Sharing Protections**  **(Non-Grand-fathered Plans only unless stated otherwise)**  **(Cont’d)**  **Cost-Sharing Protections**  **(Non-Grand-fathered Plans only unless stated otherwise)**  **(Cont’d)**  **Cost-Sharing Protections**  **(Non-Grand-fathered Plans only unless stated otherwise)**  **(Cont’d)**  **Cost-Sharing Protections**  **(Non-Grand-fathered Plans only unless stated otherwise** | Lifetime and annual dollar limits on dollar value of EHB | 42 USC §300gg-11(a) | Issuer and plan may not establish any lifetime or annual limit on the dollar amount of essential health benefits for any individual. |  |
| 45 CFR 147.126(a) | The term “essential health benefits” means essential health benefits under section 1302(b) of the Patient Protection and Affordable Care Act and applicable regulations. |  |
| 45 CFR § 147.126(c) | Per CMS Bulletin: DOL, Treasury, and HHS will consider a large group plan, or a grandfathered group health plan, to have used a permissible definition of EHB if the definition is one that is authorized by the Secretary of HHS (including any available benchmark option, supplemented as needed to ensure coverage of all ten statutory categories). The definition must be used consistently by the issuer. |  |
| 42 USC §300gg-11(b);  45 CFR  §147.126 (b)(1);  45 CFR 147.126(a)(2)(ii) | * Exception: May place lifetime or annual limits on the dollar amount of specific covered benefits that are not essential health benefits.   *Note: Restriction on lifetime or annual limits does not apply to FSAs, MSAs, or HSAs. In the case of HRAs that are integrated with other group health plan coverage that complies, the fact that benefits under the HRA itself are limited is not a violation.*  *Resource:* FAQ on Essential Health Benefits Bulletin (Q10) |  |
| Maximum out-of-pocket limit | 42 USC §18022(c) | Plan must comply with annual limit on cost-sharing (e.g., deductible, copayment, coinsurance) with respect to the essential health benefits. |  |
| 45 CFR § 156.130(a)(2) | * This single MOOP must apply to all essential health benefits under the plan (e.g., medical, prescription drug, and mental health benefits). * Plan design may include separate OOP limits for different categories of benefits, provide that the combined amount does not exceed the single combined limit. |  |
| 45 CFR § 156.130(c) | Exceptions:   * Plan may, but is not required to, count cost-sharing for non-essential health benefits or non-covered services toward the limit. * If the plan uses a network of providers, plan may, but is not required to, count cost-sharing for out-of-network benefits toward the limit.   The MOOP for self-only coverage applies to all individuals (regardless of whether the individual is in self-only or family coverage). For example, a family plan with a $18,900 family out-of-pocket limit cannot have cost sharing exceed $9,450 for any individual enrollee on the contract. *Resources*: ACA FAQ Part XII; ACA FAQ Part XVIII; 2016 Annual Notice of Benefit and Payment Parameters; [2016 Annual Notice of Benefit and Payment Parameters Fact Sheet](http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/Fact-Sheet-11-20-14.pdf); IRS Rev. Publication 969 (2020) |  |
| Coverage of students on medically necessary leave of absence (Michelle’s Law) | 42 USC  §300gg–28(c) | If the plan requires a dependent child to be a student for coverage, does the contract contain a notice of coverage of a student on a medically necessary leave of absence, in understandable language? |  |
| 42 USC  §300gg–28(b) | Issuer and plan cannot terminate coverage of dependent child who was enrolled on the basis of being a student due to a medically necessary leave of absence before the earlier of:   * The date that is 1 year after the first day of the leave; or * The date on which coverage would otherwise terminate under the terms of the coverage. |  |
| 42 USC §300gg–28(d) | Dependent on medically necessary leave of absence is entitled to the same benefits as if the child continued to be a covered student who was not on a medically necessary leave of absence. |  |
| 42 USC §300gg–28(e) | If there is a change in the manner in which the beneficiary/parent is covered and continues to cover the dependent, the changed coverage will apply for the remainder of the period of the medically necessary leave of absence. |  |
| 42 USC §300gg–28(a); 42 USC  §300gg–28(b)(3) | “Medically necessary leave of absence” means a leave of absence or change of enrollment of a dependent child from a post-secondary education institution that:   * commences while the child is suffering from a serious illness or injury; * is medically necessary; and * causes the child to lose student status for purposes of coverage under the terms of coverage.   Plan must receive written certification by a treating physician that states the child is suffering from a serious illness or injury and the leave of absence is medically necessary. |  |
| Coverage for individuals participating in approved clinical trials  Coverage for individuals participating in approved clinical trials  (Cont’d) | 42 USC § 300gg-8(a)(1) | If the plan provides coverage to “qualified individuals”:   * Cannot deny participation in an “approved clinical trial” for treatment of cancer or another life-threatening disease or condition; * Cannot deny, limit, or impose additional conditions on the coverage of routine patient costs for items and services furnished in connection with participation in the trial; * Cannot discriminate on the basis of participation in the trial. |  |
| 42 USC § 300gg-8(a)(4) | * This includes an enrollee participating in an approved clinical trial conducted outside the state in which the enrollee resides. |  |
| 42 USC  § 300gg-8(b) | “Qualified individual” means enrollee who is eligible to participate in the trial according to trial protocol, and either: (1) referring provider is a participating provider and has concluded that the trial would be appropriate for individual, or (2) individual provides medical or scientific information establishing that the trial would be appropriate. |  |
| WAC 284-43-5420(4) | “Approved clinical trial” means a phase I, II, III, or IV clinical trial conducted in relation to the prevention, detection, or treatment of cancer or other life-threatening disease or condition, and it is either funded or approved by: |  |
| WAC 284-43-5420(4)(a) | * One of the National Institutes of Health (NIH); |  |
| WAC 284-43-5420(4)(b) | * An NIH cooperative group or center which is a formal network of facilities that collaborate on research projects and have an established NIH-approved peer review program operating within the group including, but not limited to, the NCI Clinical Cooperative Group and the NCI Community Clinical Oncology Program; |  |
| WAC 284-43-5420(4)(c) | * The federal Departments of Veterans Affairs or Defense; |  |
| WAC 284-43-5420(4)(d) | * An institutional review board of an institution in this state that has a multiple project assurance contract approval by the Office of Protection for the Research Risks of the NIH; or |  |
| WAC 284-43-5420(4)(e) | * A qualified research entity that meets the criteria for NIH Center Support Grant eligibility. |  |
| WAC 284-43-5420(4) | Life threatening condition means any disease or condition from which the likelihood of death is probably unless the course of the disease or condition is interrupted. |  |
| 42 USC  § 300gg-8(a)(2)  WAC 284-43-5420 | Routine patient costs includes all items/services that would be typically covered if not enrolled in trial, but not: (1) the investigational item, device, or service, (2) items solely for data collection or analysis needs, and (3) service clearly inconsistent with widely accepted standards of care. |  |
| WAC 284-43-5420(1) | A carrier may require enrollees to meet the eligibility requirements of the clinical trial according to the trial protocol. While not required to impose such a condition, a carrier may refuse coverage under this section if the enrollee does not provide medical and scientific information establishing that the individual's participation in such trial would be appropriate based on the individual meeting the eligibility requirements for the clinical trial, unless the enrollee is referred to the clinical trial by a health care provider participating in the carrier's network. |  |
| WAC 284-43-5420(2) | Includes the cost of prescription medication used for the direct clinical management of the enrollee, unless the trial is for the investigation of the prescription medication or the medication is typically provided by the research sponsors free of charge for any enrollee in the trial. |  |
| 42 USC § 300gg-8(a)(3) | * If an in-network provider is participating in a clinical trial, the issuer may require participation in the trial through the participating provider if the provider will accept the individual as a participant.   *Resources:* DOL Checklist for Group Plans; Compliance Assistance Guide; ACA FAQ Part XV |  |
| Preventive Services without Cost-Sharing  (Non-Grand-fathered Plans Only)  Preventive Services without Cost-Sharing  (Non-Grand-fathered Plans Only) | [**ESHB 1957**](https://app.leg.wa.gov/billsummary?BillNumber=1957&Initiative=false&Year=2023)**;**  42 USC  § 300gg-13 (a)(1-5) | Issuer and plan must provide coverage for specified preventive services: |  |
| [**ESHB 1957**](https://app.leg.wa.gov/billsummary?BillNumber=1957&Initiative=false&Year=2023)**;**  45 CFR  §147.130 (a)(1)(i) | * Evidence-based items or services that have in effect a [rating of A or B in the current recommendations of the USPSTF](https://www.uspreventiveservicestaskforce.org/uspstf/topic_search_results?topic_status=P&grades%5B%5D=A&grades%5B%5D=B&searchterm=); |  |
| [**ESHB 1957**](https://app.leg.wa.gov/billsummary?BillNumber=1957&Initiative=false&Year=2023)**;**  45 CFR  §147.130 (a)(1)(ii) | * Immunizations that have in effect a recommendation from the [Advisory Committee on Immunization Practices (CDC)](https://www.cdc.gov/vaccines/hcp/acip-recs/vacc-specific/index.html); |  |
| [**ESHB 1957**](https://app.leg.wa.gov/billsummary?BillNumber=1957&Initiative=false&Year=2023)**;**  45 CFR  §147.130 (a)(1)(iii) | * Evidence-informed preventive care and screenings provided for in [HRSA guidelines for infants, children, and adolescents](https://mchb.hrsa.gov/programs-impact/programs/bright-futures); and |  |
| [**ESHB 1957**](https://app.leg.wa.gov/billsummary?BillNumber=1957&Initiative=false&Year=2023)**;**  45 CFR  §147.130 (a)(1)(iv) | * Evidence-informed preventive care and screenings provided for in [HRSA guidelines for women](https://www.womenspreventivehealth.org/recommendations/). |  |
| [**ESHB 1957**](https://app.leg.wa.gov/billsummary?BillNumber=1957&Initiative=false&Year=2023)**;**  45 CFR  §147.130 (a)(1) | For the specified preventive services, plan cannot impose cost-sharing (e.g., deductibles, co-payments, coinsurance). |  |
| 45 CFR  §147.130 (a)(2)(i) | * If a preventive item or service is billed separately (or is tracked as individual encounter data separately) from an office visit, then a plan or issuer may impose cost-sharing requirements with respect to the office visit. |  |
| 45 CFR  §147.130 (a)(2)(ii) | * If a preventive service is billed together with an office visit, and the primary purpose of the office visit is delivery of the preventive service, the plan cannot impose cost-sharing for the office visit. |  |
| 45 CFR  §147.130 (a)(2)(iii) | * If a preventive service is billed together with an office visit, but the primary purpose of the office visit is NOT delivery of the preventive service, the plan may impose cost-sharing for the office visit. |  |
| 45 CFR  §147.130 (a)(5) | * Plans can impose cost-sharing for treatment resulting from the recommended services. |  |
| 45 CFR  §147.130 (b)(1) | * Plans must cover any newly recommended services within one year after the date the recommendation or guidance is issued. |  |
| 45 CFR  §147.130 (a)(3) | * Plans with a provider network do not have to cover preventive services delivered out-of-network. |  |
|  | [**ESHB 1957**](https://app.leg.wa.gov/billsummary?BillNumber=1957&Initiative=false&Year=2023) | Annually, a health carrier shall determine whether any additional items or services must be covered without cost-sharing requirements or whether any items or services are no longer required to be covered. The carrier's determination must be included in its health plan filings submitted to the commissioner. |  |
|  |  | The health plan may not impose cost-sharing requirements for the preventive services required to be covered under existing law when the services are provided by an in-network provider. If a plan does not have in its network a provider who can provide such an item or service as described under existing law, the plan must cover the item or service when performed by an out-of-network provider and may not impose cost sharing with respect to the item or service. |  |
|  |  | If any portion of 42 U.S.C. Sec. 300gg-13 is found invalid, for a health plan offered as a qualifying health plan for a health savings account, the carrier may apply cost sharing to coverage of the services that have been invalidated only at the minimum level necessary to preserve the enrollee's ability to claim tax exempt contributions and withdrawals from the enrollee's health savings account under internal revenue service laws and regulations. |  |
|  | [**ESHB 1957**](https://app.leg.wa.gov/billsummary?BillNumber=1957&Initiative=false&Year=2023) | A carrier may use reasonable medical management techniques to determine the frequency, method, treatment, or setting for an item or service described in ESHB 1957 Section 1, subsection (1) to the extent not specified in the relevant recommendation or guideline, federal rules and guidance related to the coverage of preventive services in effect on January 8, 2024, and any rules adopted by the insurance commissioner. |  |
| Breast-feeding | [**ESHB 1957**](https://app.leg.wa.gov/billsummary?BillNumber=1957&Initiative=false&Year=2023)**;** 45 C.F.R. 147.130  (a)(1)(i) and (iv) | Must cover comprehensive lactation support and counseling, by a trained provider during pregnancy and/ or in the postpartum period, and costs for renting breastfeeding equipment; including double electric breast pumps (including pump parts and maintenance) and breast milk storage supplies. Coverage should not be predicated on prior failure of a manual pump. Breastfeeding equipment may also include equipment and supplies as clinically indicated to support dyads with breastfeeding difficulties and those who need additional services. |  |
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| **Dental Services** | Not subject to contract or provider agreement | RCW 48.44.495(1)(a) | If the plan covers any dental services:   * It may not require, directly or indirectly, that a participating provider dentist provide services to an enrollee at a fee set by, or subject to the approval of, the HCSC unless the dental services are covered services; |  |
| RCW 48.44.495(1)(b) | * It may not prohibit, directly or indirectly, a participating dentist from offering or providing to an enrollee dental services that are not covered services on any terms or conditions acceptable to the dentist and the enrollee. |  |
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| **Dependent**  **Enrollment Requirement** | Newborn coverage | RCW 48.43.115(3)(f) | Coverage for newborns must be no less than the coverage of the child’s mother for no less than three weeks (21 days), even if there are separate hospital admissions. |  |
| Adoptive Child | RCW 48.01.180(1) | A child must be considered a dependent child for coverage purposes upon assumption of a legal obligation for total or partial support of a child in anticipation of adoption. On termination of such legal obligations, the child shall no longer be considered a dependent child for coverage purposes. |  |
|  |  | RCW 48.01.180(2) | Coverage for dependent children placed for adoption must be provided under the same terms and conditions as those that apply to natural dependent children, whether or not the adoption has become final. |  |
|  | RCW 48.44.420(1) | Cannot restrict coverage of any dependent child adopted by or placed for adoption with an enrollee solely on the basis of a preexisting condition of the child at the time that the child would otherwise become eligible for coverage under the plan if the adoption or placement for adoption occurs while the enrollee is eligible for coverage under the plan. |  |
| **Dependent**  **Enrollment Requirement**  **(Cont’d)** |  | RCW 48.01.180(3) | If payment of an additional premium is required to provide coverage for the child, the contract may require notification of placement and payment of the required premium. |  |
|  | RCW 48.44.420(2) | The notification period shall be no less than sixty days for the date of placement. |  |
| Newborn Child | RCW 48.44.212(1) | If plan covers dependent children of the enrollee it must provide coverage for newborn infants of the enrollee from and after the moment of birth. |  |
|  | Enrollment | RCW 48.44.212(2) | If payment of an additional premium is required to provide coverage for a child, the contract may require that notification of birth of a newly born child and payment of the required premium must be furnished to the contractor.   * The notification period shall be no less than 60 days from the date of birth. |  |
|  | Disabled Child Over Age Limit | RCW 48.44.210 | If the contract states that coverage of a dependent child will terminate upon attainment of the limiting age for dependent children, the contract must also state that coverage of a dependent child will not be terminated while the child is and continues to be **both** (1) incapable of self-sustaining employment by reason of developmental or physical disability and (2) chiefly dependent upon the subscriber for support and maintenance.   * Issuer may require proof of incapacity and dependency within 31 days of the child’s attainment of the limiting age and subsequently, but not more than annually after the first two years following attainment of the limiting age. |  |
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| **Diabetes**  **Diabetes (Cont’d)** |  | RCW 48.44.315 | If the contract provides RX benefits, the contract must provide appropriate and medically necessary equipment and supplies, as prescribed by a health care provider, for all subscribers diagnosed “Insulin using”, “Non-insulin using”, and “elevated blood glucose induced by pregnancy. This must include: |  |
| RCW  48.44.315 (2)(a) | * insulin, * syringes, * injection aids, * blood glucose monitors, * test strips for:   + blood glucose monitors,   + visual blood sugar reading, and   + urine testing * insulin pumps and accessories to the pumps, * insulin infusion devices, * prescriptive oral agents for controlling blood sugar levels, * foot care appliances for prevention of complications associated with diabetes, and * glucagon emergency kits. |  |
| RCW 48.43.780(1) | Health plans providing prescription drug coverage of insulin drugs for the treatment of diabetes must cap the total amount that an enrollee is required to pay for a covered insulin drug at an amount not to exceed thirty-five dollarsper thirty-day supply of the drug. per thirty-day supply of the drug. |  |
|  | * Prescription insulin drugs must be covered without being subject to a deductible, and any cost sharing paid by an enrollee must be applied toward the enrollee's deductible obligation. |  |
| RCW 48.43.780(2) | If the federal internal revenue service removes insulin from the list of preventive care services which can be covered by a qualifying health plan for a health savings account before the deductible is satisfied, the carrier must establish the plan's cost sharing for the coverage of prescription insulin for diabetes at the minimum level necessary to preserve the enrollee's ability to claim tax exempt contributions from his or her health savings account under internal revenue service laws and regulations. |  |
| RCW  48.44.315 (2)(b) | Whether or not the contract provides Rx Benefits, it must provide:   * outpatient self-management training and education, including medical nutrition therapy, as ordered by the health care provider. Diabetes outpatient self-management training and education may be provided only by health care providers with expertise in diabetes. * HCSC may restrict patients to seeing only health care providers who have signed participating provider agreements with the HCSC or an insuring entity under contract with the health care services contractor. |  |
| RCW  48.44.315 (3) | Benefits may be subject to customary cost sharing for all other similar services or supplies within the policy. |  |
| RCW  48.44.315 (5) | Services must be covered when deemed medically necessary. |  |
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| **Disclosures**  **Disclosures**  **(Cont’d)**  **Disclosures**  **(Cont’d)**  **Disclosures**  **(Cont’d)**  **Disclosures**  **(Cont’d)** | Required  Required  (Cont’d)  Required  (Cont’d) | RCW 48.43.510(3)  WAC 284-43-5130(4) | Does the issuer provide to all enrollees and prospective enrollees a list of available disclosure items, including:   * Instructions on how to access and request copies in paper and electronic forms, and * Web site links to the entire health plan disclosure information. |  |
| RCW 48.43.510(1)(g)  WAC 284-43-5130 | Does the plan clearly and prominently display an offer to provide the following information before purchase or selection? Information must be provided upon request (either by paper or electronic, whichever is requested). Must be prominently displayed and accessible on the issuer’s website and easily understood by the average plan participant. |  |
| RCW 48.43.510(1)(a) | Listing of covered benefits, including RX benefits, if any,   * copy of the current formulary, if any is used * definitions of terms such as generic versus brand name, and * policies regarding coverage of drugs, such as how they become approved or taken off the formulary, and how consumers may be involved in decisions about benefits; |  |
| RCW 48.43.510(1)(b) | listing of exclusions, reductions, and limitations to covered benefits, and any definition of medical necessity or other coverage criteria upon which they may be based; |  |
| RCW 48.43.510(1)(c) | * statement of the carrier's policies for protecting the confidentiality of health information; |  |
| RCW 48.43.510(1)(d) | * statement of the cost of premiums and any enrollee cost-sharing requirements; |  |
| RCW 48.43.510(1)(e) | * summary explanation of the carrier's review of adverse benefit determinations and grievance processes; |  |
| RCW 48.43.510(1)(f) | * statement regarding the availability of a point-of-service option, if any, and how the option operates; and |  |
| RCW 48.43.510(1)(g) | * convenient means of obtaining lists of participating primary care and specialty care providers, including disclosure of network arrangements that restrict access to providers within any plan network. |  |
| RCW 48.43.510(2) | Does the contract contain the following written information or notify the enrollee that he is entitled to it upon request: |  |
| RCW 48.43.510(2)(a) | * Any documents, instruments, or other information referred to in the medical coverage agreement; |  |
| RCW 48.43.510(2)(b) | * A full description of the procedures to be followed by an enrollee for consulting a provider other than the primary care provider and whether any entity must authorize the referral; |  |
| RCW 48.43.510(2)(c | * Procedures, if any, that an enrollee must first follow for obtaining prior authorization  for health care services; |  |
| RCW 48.43.510(2)(d) | * A written description of any reimbursement or payment arrangements between the issuer and providers, including capitation provisions, fee-for-service provisions, and health care delivery efficiency provisions; |  |
| RCW 48.43.510(2)(e) | * Descriptions and justifications for provider compensation programs, including any incentives or penalties that are intended to encourage providers to withhold services or minimize or avoid referrals to specialists; |  |
| RCW 48.43.510(2)(f) | * An annual accounting of all payments made by the carrier which have been counted against any payment limitations, visit limitations, or other overall limitations on a person's coverage under a plan; |  |
| RCW 48.43.510(2)(h) | Accreditation status with one or more national managed care accreditation organizations, and whether the carrier tracks its health care effectiveness performance using the health employer data information set (HEDIS), whether it publicly reports its HEDIS data, and how interested persons can access its HEDIS data. |  |
| Description of Provider Tiering | WAC 284-170-330(2) | If the plan providers or facilities are placed in tiers, and this network design results in cost differentials for enrollees, the issuer must disclose to enrollees at the time of enrollment the cost difference and the basis for the issuer’s placement of providers for facilities in one tier or another. |  |
| WAC 284-170-330(3) | The lowest cost-sharing tier of a tiered network must provide enrollees with adequate access and choice among health care providers and facilities for essential health benefits as set forth in WAC 284-43-5642, 284-43-5702 and 284-43-5782. |  |
|  | WAC 284-170-330(6) | An issuers provider and facility ranking program, and the criteria used to assign providers and facilities to different tiers, must not be described in plan documents so as to deceive consumers as to issuer rating practices and their effect on available benefits. When a tiered network is used, issuer must provide detailed information on its web site and if requested, make available in paper form information about the tiered network including, but not limited to: |  |
|  | WAC 284-170-330(6)(a) | * The providers and facilities participating in the tiered network; |  |
|  | WAC 284-173-330(6)(b) | * The selection criteria, if any, used to place the providers and facilities, but not including the results of applying those selection criteria to a particular |  |
|  | WAC 284-170-330(6)(c) | * The potential for providers and facilities to move from one tier to another at any time; and |  |
|  | WAC 284-170-330(6)(d) | * The tier in which each participating provider or facility is assigned. |  |
| Emergency Fill | WAC 284-170-470 | If a carrier requires cost-sharing for enrollees receiving and emergency fill as defined in WAC 284-170-470, then issuers must disclose that information to enrollees within their policy forms. A clear statement explaining that members may be eligible to receive an emergency fill for prescription drugs under the circumstances described in WAC 284-170-470 must be disclosed. This disclosure must include the process that members use to obtain an emergency fill, and cost-sharing requirements, if any, for an emergency fill. The applicable WAC also does not limit the fill to one per prescription medication per calendar year. WAC 284-43-5110(5), WAC 284-43-5170(1)(c) and WAC 284-170-470(8)(c) |  |
| Notice regarding coverage required by WHCRA  Notice regarding coverage required by WHCRA (Cont’d) | Women’s Health and Cancer Rights Act of 1998 (“WHCRA”)  29 USC  §1185b(a-b)  42 USC § 300gg–52 | Does the contract provide notice to each enrollee of the coverage required for mastectomy reconstruction, including surgery on the unaffected breast for symmetrical appearance, and prostheses, and physical complications of all states of mastectomy, including lymphedemas?  Can use model notices created by the Department of Labor: |  |
| DOL Model Notices | * + - Enrollment notice:   “If you have had or are going to have a mastectomy, you may be entitled  to certain benefits under the Women’s Health and Cancer Rights Act of  1998 (WHCRA). For individuals receiving mastectomy-related benefits,  coverage will be provided in a manner determined in consultation with  the attending physician and the patient, for:  \* All stages of reconstruction of the breast on which the mastectomy  was performed;  \* Surgery and reconstruction of the other breast to produce a  symmetrical appearance;  \* Prostheses; and  \* Treatment of physical complications of the mastectomy, including  lymphedema.  These benefits will be provided subject to the same deductibles and  coinsurance applicable to other medical and surgical benefits provided  under this plan. Therefore, the following deductibles and coinsurance  apply: [insert deductibles and coinsurance applicable to these benefits].  If you would like more information on WHCRA benefits, call your plan  administrator [insert phone number].   * + - Annual notice:   “Do you know that your plan, as required by the Women’s Health and Cancer Rights Act of 1998, provides benefits for mastectomy-related services including all stages of reconstruction and surgery to achieve symmetry between the breasts, prostheses, and complications resulting from a mastectomy, including lymphedema? Call your plan administrator at [insert phone number] for more information.” |  |
|  | Health Care Benefit Managers | WAC 284-180-325(1) | If the plan utilizes Health Care Benefit Managers, a website link to the list of the Health Care Benefit Managers must be included in the plan for enrollees to access. See definition of “Health Care Benefit Manager in [E2SSB 5213](https://app.leg.wa.gov/billsummary?Year=2023&BillNumber=5213) |  |
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| **Durable Medical Equipment** |  | RCW 48.44.315(2); | Does the contract or certificate define equitable Durable Medical Equipment (“DME”) Benefits in the following situations? |  |
| WHCRA, 29 USC §1185b | * Durable medical equipment for diabetes when plan includes coverage for pharmacy services * Prostheses after mastectomy |  |
| RCW 70.126.020 | * Home Health Care benefit (as applicable under the plan’s terms), including rental of apparatus and equipment such as wheelchairs, hospital beds, respirators, splints, trusses, braces, or crutches needed for treatment. |  |
| RCW 48.43.290 | * Coverage for DME must include the sales tax, or use tax calculation in payment. |  |
|  |  |  |  |  |
| **Emergency**  **Treatment**  **Emergency Treatment**  **(Cont’d)**  **Emergency Treatment**  **(Cont’d)**  **Emergency Treatment**  **(Cont’d)**  **Emergency Treatment**  **(Cont’d)** | Definitions and coverage requirements  Definitions and coverage requirements (Cont’d)  Definitions and coverage requirements (Cont’d) | 42 U.S.C.  §300gg-19a(b)(2)(B);  RCW 48.43.005(18)(a)(i) | Is the plan’s definition of "Emergency services" consistent with RCW 48.43.005(18) which states:  “’Emergency Services’ means a medical screening examination, as required under section 1867 of the social security act (42 U.S.C. 1395dd), that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate that emergency medical condition; and |  |
| RCW 48.43.005(18) (a)(ii) | * Medical examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the hospital, as are required under section 1867 of the social security act (42 U.S.C. 1395dd) to stabilize the patient. Stabilize, with respect to an emergency medical condition, has the meaning given in section 1867(e)(3) of the social security act (42 U.S.C. 1395dd(e)(3)); and |  |
| (a)(iii) | * Covered services provided by staff or facilities of a hospital after the enrollee is stabilized and as part of outpatient observation or an inpatient or outpatient stay with respect to the visit during which screening and stabilization services have been furnished. Poststabilization services relate to medical, mental health, or substance use disorder treatment necessary in the short term to avoid placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part; or |  |
| (b)(I) | * + A screening examination that is within the capability of a behavioral health emergency services provider including ancillary services routinely available to the behavioral health emergency services provider to evaluate that emergency medical condition; |  |
| (b)(ii) | * + Examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the behavioral health emergency services provider, as are required under section 1867 of the social security act (42 U.S.C. Sec. 1395dd) or as would be required under such section if such section applied to behavioral health emergency services providers, to stabilize the patient. Stabilize, with respect to an emergency medical condition, has the meaning given in section 1867(e)(3) of the social security act (42 19 U.S.C. Sec. 1395dd(e)(3)); and |  |
| (b)(iii) | * + Covered behavioral health services provided by staff or facilities of a behavioral health emergency services provider after the enrollee is stabilized and as part of outpatient observation or an inpatient or outpatient stay with respect to the visit during which screening and stabilization services have been furnished. Poststabilization services relate to mental health or substance use disorder treatment necessary in the short term to avoid placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. |  |
| 42 U.S.C.  §300gg-19a(b)(2)(A)  RCW 48.43.005(17)  WAC 284-43-0160(8) | Is the plan’s definition of "Emergency medical condition" consistent with RCW 8.43.005(17), or WAC 284-170-130(8), which states:  “’Emergency Medical Condition’ means a medical, mental health, or substance use disorder condition manifesting itself by acute symptoms of sufficient severity including, but not limited to, severe pain or emotional distress, such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical, mental health, or substance use disorder treatment attention to result in a condition (a) placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy, (b) serious impairment to bodily functions, or (c) serious dysfunction of any bodily organ or part. |  |
|  | RCW 48.43.005**(37**) | “Nonemergency health care services performed by nonparticipating providers at certain participating facilities" means covered items or services other than emergency services with respect to a visit at a participating health care facility, as provided in section 2799A-1(b) of the public health service act (42 U.S.C. Sec. 300gg-111(b)), 45 C.F.R. Sec. 149.30, and 45 C.F.R. Sec. 149.120. |  |
|  | RCW 48.43.005 (10) | “Behavioral health emergency services provider" means emergency services provided in the following settings: |  |
|  | RCW 48.43.005 (10)(a) | * A crisis stabilization unit as defined in RCW 71.05.020; |  |
|  | RCW 48.43.005 (10)(b) | * An evaluation and treatment facility that can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is licensed or certified as such by the department of health; |  |
|  | RCW 48.43.005 (10)(c) | * An agency certified by the department of health under chapter 31 71.24 RCW to provide outpatient crisis services; |  |
|  | RCW 48.43.005 (10)(d) | * A triage facility as defined in RCW 71.05.020; |  |
|  | RCW 48.43.005 (10)(e) | * An agency certified by the department of health under chapter 71.24 RCW to provide medically managed or medically monitored withdrawal management services; or |  |
|  | RCW 48.43.005 (10)(f) | * A mobile rapid response crisis team as defined in RCW 71.24.025 that is contracted with a behavioral health administrative services organization operating under RCW 71.24.045 to provide crisis response services in the behavioral health administrative services organization's service area. |  |
| Coverage Requirement | RCW  48.43.093 (1)(a) | * Plan must cover emergency services provided to a covered person if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. |  |
|  | RCW  48.43.093 (1)(a);  42 U.S.C.  §300gg-19a(b)(1)(B-C) | * The plan must cover emergency services provided by a nonparticipating hospital emergency department or behavioral health emergency services provider, without prior authorization of emergency services. |  |
|  | RCW  48.43.093(1)(b); | * A health carrier shall cover emergency services without limiting what constitutes an emergency medical condition solely on the basis of diagnosis codes. Any determination of whether the prudent layperson standard has been met must be based on all pertinent documentation and be focused on the presenting symptoms and not solely on the final diagnosis. |  |
|  | RCW  48.43.093(2) | * Coverage of emergency services may be subject to applicable in-network copayments, coinsurance, and deductibles, as provided in chapter [48.49](http://app.leg.wa.gov/RCW/default.aspx?cite=48.49) RCW. |  |
|  | RCW 48.49.020  (1)(a) | * Must hold an enrollee harmless from balance billing when emergency services are provided by an out-of-network hospital |  |
| 42 U.S.C. Sec. 300gg-111(b); RCW 48.49.020(1) and (1)(a) | Must hold an enrollee harmless from balance billing as defined by [RCW 48.43.005(5)](https://app.leg.wa.gov/RCW/default.aspx?cite=48.43.005), when:   * emergency services are provided by nonparticipating provider or facility |  |
|  |
|  | RCW 48.49.020 (1)(b) | * Nonemergency health care services performed by nonparticipting providers at certain participating facilities; or |  |
| Coverage Requirement (Cont’d) | RCW 48.49.020 (1)(c) | * Air Ambulance Services |  |
|  |  | RCW 48.49.020 (2)(b) | * A health care provider, health care facility, or air ambulance service provider may not request or require a patient at any time, for any procedure, service, or supply, to sign or otherwise execute by oral, written, or electronic means, any document that would attempt to avoid, waive, or alter any provision of RCW 48.49.020 and 48.49.030 or sections 2799A-1 et seq. of the public health service act (P.L. 116-260) |  |
|  |  | RCW  48.43.093(3)(a) | * Issuer may require notification of stabilization or inpatient admission within the time frame specified in its contract with the hospital or behavioral health emergency services provider or as soon thereafter as medically possible but no less than twenty-four hours; or |  |
|  |  | RCW  48.43.093(3)(b) | * Issuer may require a hospital or emergency behavioral health emergency services provider to make a documented good faith effort to notify the covered person's health carrier within 48 hours of stabilization, or by the end of the business day following the day the stabilization occurs, whichever is later, if the covered person needs to be stabilized. If a health carrier requires such notification, the health carrier shall provide access to an authorized representative seven days a week to receive notifications. |  |
|  |  | RCW  48.43.093(4) | Unless provided otherwise in this section, care that is a direct result of the emergency must be obtained in accordance with the plan’s usual terms and conditions of coverage. |  |
|  | Balance Billing Notice | RCW 48.49.060(1); WAC 284-43B-050 | Issuers must provide notice to consumers of their rights concerning balance billing under RCW 48.49 and 42 U.S.C. Secs. 300gg-111 and 5 300gg-112.   * The notice must include contact information for the office of the insurance commissioner so consumers may make contact if they believe they have received a balance bill in violation of RCW 48.49. |  |
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|  |  | RCW 48.49.090(1) | A carrier must update its website and provider directory no later thank thirty days after the addition or termination of a facility or provider. |  |
|  |  | RCW 48.49.090(2) | A carrier must provide an enrollee with: |  |
|  |  | (2)(a) | * A clear description of the health plan's out-of-network   health benefits; |  |
|  |  | (2)(b) | * The Notice of Consumer Rights developed under RCW 48.49.060; |  |
| **Emergency Treatment**  **(Cont’d)** |  | (2)(c) | * Notification that if the enrollee receives services from an out-of-network provider, facility, or behavioral health emergency services provider, under circumstances other than those described in RCW 48.49.020, the enrollee will have the financial responsibility applicable to services provided outside the health plan's network in excess of applicable cost-sharing amounts and that the enrollee may be responsible for any costs in excess of those allowed by the health plan; |  |
|  |  | (2)(d) | * Information on how to use the carrier's member transparency tools under [RCW 48.43.007](https://app.leg.wa.gov/rcw/default.aspx?cite=48.43.007) |  |
|  |  | (2)(e) | * Upon request, information regarding whether a health care provider is in-network or out-of-network, and whether there are in network providers available to provide emergency medicine, anesthesiology, pathology, radiology, neonatology, surgery, hospitalist, intensivist and diagnostic services, including radiology and laboratory services at specified in-network hospitals or ambulatory surgical facilities; and |  |
|  |  | (2)(f) | * Upon request, an estimated range of the out-of-pocket costs for an out-of-network benefit. |  |
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| **Enrollee May Obtain Services Outside the Plan** |  | RCW 48.43.085 | Does the contract allow the enrollee to freely contract to obtain any medical services outside of the health plan on any terms the enrollee chooses? |  |
| RCW 48.43.087(2) | Does the contract allow the enrollee to obtain mental health services solely at his own expense IF:   * The enrollee’s mental health care coverage is exhausted * During an appeal or adverse certification process * When an enrollee’s condition is excluded from coverage; or * For any other clinically appropriate reason at any time. |  |
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| **Eosinophilic Gastro-intestinal Associated Disorder – Elemental Formula** |  | RCW 48.43.176 (1) | Must offer coverage for medically necessary elemental formula, regardless of delivery method, when a licensed provider with prescriptive authority diagnoses a patient with an eosinophilic gastrointestinal associated disorder and orders and supervises the use of the elemental formula. |  |
| RCW 48.43.176 (2) | Issuer may require prior authorization or impose other appropriate utilization controls in approving coverage for medically necessary elemental formula. |  |
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| **Every Category of Provider**  **Every Category of Provider (Cont’d)** |  | 42 U.S.C. §300gg-5(a)  *See* ACA FAQ Part XV | Plan and Issuer must not discriminate with respect to participation under the plan against any provider acting within the scope of that provider’s license or certification under applicable State law. (Reimbursement rates may vary based on quality or performance measures.) |  |
| RCW  48.43.045 (1)(a)(i);  WAC 284-170-200(2);  RCW 48.43.515(1) | Every category of provider must be permitted to provide covered services, if the treatment is within the scope of the provider’s licensure. Each enrollee must have adequate choice among providers. |  |
| WAC 284-170-270(2 and 3);  RCW 48.43.045(1)(a)(ii) | * Providers can be required to conform with carrier standards for cost - Containment, administrative procedures, and provision of cost-effective, clinically effective services. |  |
| WAC  284-170-270(2) | * Issuers may place reasonable limits on specific services rendered by specific categories of providers based on relevant information or evidence of the type usually considered and relied upon in making determinations of cost-effectiveness or clinical efficacy. However, health plans must not contain unreasonable limits. |  |
| WAC  284-170-270(4) | * Plans may use restricted networks. |  |
| WAC  284-170-270(4)(a) | * Plans that use “gatekeepers” or “Medical Homes” for access to specialists may use them for access to specified categories of providers. |  |
| WAC  284-170-270(5) | * Issuers may not offer coverage for services by certain categories of providers solely as a separately-priced optional benefit (e.g., chiropractic care; acupuncture). |  |
| RCW 48.44.220;  RCW 48.44.225 | Contract must cover services performed by a Registered Nurse, Advanced Registered Nurse Practitioner, or podiatrist if: |  |
| RCW 48.44.290 | * the service is within the scope of the provider’s license, and |  |
| RCW 48.44.300 | * the contract would have covered the service if it had been performed by a physician licensed under Chapter 18.71 RCW. |  |
| WAC 284-44-045(1) | Does the contract contain the following provision, or substantial equivalent:   * "Benefits under this contract will not be denied for any health care service performed by a registered nurse licensed to practice under chapter [18.88](http://apps.leg.wa.gov/RCW/default.aspx?cite=18.88) RCW, if first, the service performed was within the lawful scope of such nurse's license, and second, this contract would have provided benefits if such service had been performed by a doctor of medicine licensed to practice under chapter [18.71](http://apps.leg.wa.gov/RCW/default.aspx?cite=18.71) RCW. |  |
| WAC 284-44-045(4) | The contract may not contain a provision which places restrictions or limitations on benefits for services by nurses or any class of doctors which are not also placed on benefits for services by other doctors. An example of an impermissible provision would be one which limited the number of office calls made to a registered nurse to a number less than the limit for office calls made to a medical doctor. |  |
| RCW 48.43.190 | Does the contract cover chiropractic care on the same basis as any other care? |  |
| RCW 48.44.310 | Benefits cannot be denied on the basis that a service is not performed by a physician licensed under Chapter 18.57 or 18.71 RCW. |  |
| WAC 284-170-360(3) | Must provide direct access to a chiropractor without a referral for covered chiropractic benefits, but can restrict this to in-network chiropractors. |  |
| Denturist if Dental covered | RCW 48.44.500  RCW 48.43.180 | For contracts offering dental coverage, Denturist must be able to provide services within the scope of their license if the plan would provide the same benefits performed by a dentist. |  |
|  |  | [RCW](https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bills/House%20Bills/1683-S.pdf?q=20230227153351) 48.43.745(1) | Carriers that provide dental only coverage and every health carrier offering dental only coverage in addition to a health plan must permit denturists licensed under chapter 18.30 RCW to provide dental services or care included in their benefits package to the extent that: |  |
|  |  | RCW 48.43.745(1)(a) | * The provision of such dental services or care is within the health care providers' permitted scope of practice; and |  |
|  |  | RCW 48.43.745(1)(b) | * The providers agree to abide by standards related to: |  |
|  |  | RCW 48.43.745(1)(b)(i) | * Provision, utilization review, and cost containment of dental services; |  |
| **Every Category of Provider (Cont’d)** |  | RCW 48.43.745(1)(b) (ii) | * Management and administrative procedures; and |  |
|  |  | RCW 48.43.745(1)(b)  (iii) | * Provision of cost-effective and clinically efficacious dental services. |  |
|  |  | RCW 48.43.745(2) | These requirements do not apply to a licensed health care profession regulated under Title 18 RCW when the licensing statute for the profession states that such requirements do not apply. |  |
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| **Experimental**  **And Investig-**  **ational** |  | WAC 284-44-043(1) | If the contract includes exclusion, reduction or limitation for services that are experimental or investigational, is the definition of Experimental and Investigational services included in the contract? |  |
| WAC 284-44-043(2) | The definition must include an identification of the authority or authorities which will make a determination of which services will be considered to be experimental or investigational.   * If the HCSC or an affiliated entity is the authority making the determination, it must state the criteria it will utilize to make the determination. This requirement may be satisfied by using one or more of the following statements, or other similar statements: |  |
| WAC  284-44-043(2)(a) | * "In determining whether services are experimental or investigational, the plan will consider whether the services are in general use in the medical community in the state of Washington, whether the services are under continued scientific testing and research, whether the services show a demonstrable benefit for a particular illness or disease, and whether they are proven to be safe and efficacious." |  |
| WAC  284-44-043(2)(b) | * "In determining whether services are experimental or investigational, the plan will consider whether the services result in greater benefits for a particular illness or disease than other generally available services, and do not pose a significant risk to health or safety of the patient." |  |
| WAC  284-44-043(2)(b) | * The supporting documentation upon which the criteria are established must be made available for inspection upon written request in all instances and may not be withheld as proprietary. |  |
| WAC 284-43-3110 (1);  WAC 284-44-043(3) | Whether the claim or request for preauthorization is made in writing or through other claim presentation or preauthorization procedures set out in the contract, any denial because of an experimental or investigational exclusion or limitation, must be done in writing within twenty working days of receipt of a fully documented request. The issuer may extend the review period beyond twenty days only with the informed written consent of the enrollee. |  |
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| **Grandfathered Plan Status**  **Grand-fathered Plan Status**  **(Cont’d)**  **Grand-fathered Plan Status**  **(Cont’d)** |  | 45 CFR  §147.140 (a)(1)(i) | **Does the plan claim to be grandfathered? If no, skip this section and go on to the next section.**  A plan may claim grandfathered status if, for each benefit package or option: |  |
| 42 U.S.C. §18011(ab)(2)  45 CFR §147.140 (a)(1)(i) | * At least one person was enrolled in the plan on March 23, 2010; |  |
| 42 U.S.C. §18011(b)  45 CFR §147.140 (b)(1) | * At least one person has been covered since that time (not necessarily the same person, but at all times at least one person);   + If an individual was enrolled in the plan on March 23, 2010, grandfathered coverage includes coverage of their family members who enroll in their grandfathered coverage after March 23, 2010. * A group health plan that provided coverage on March 23, 2010 and has retained its status as a grandfathered health plan is grandfathered health plan coverage for new employees (whether newly hired or newly enrolled) and their families enrolling in the plan after March 23, 2010. |  |
| 45 CFR  §147.140(a)(2)(i)  WAC 284-43-0270(2) | The issuer must include a statement that it believes it is a grandfathered plan in any plan materials provided to participants and beneficiaries that describe the benefits provided under the plan; |  |
| 45 CFR  §147.140 (a)(2)(ii) | Model language can be used to satisfy this disclosure requirement:   * “This [health insurance issuer] believes this [plan or coverage] is a “grandfathered health plan” under the Patient Protection and Affordable Care Act (the Affordable Care Act). As permitted by the Affordable Care Act, a grandfathered health plan can preserve certain basic health coverage that was already in effect when that law was enacted. Being a grandfathered health plan means that your [plan or policy] may not include certain consumer protections of the Affordable Care Act that apply to other plans, for example, the requirement for the provision of preventive health services without any cost sharing. However, grandfathered health plans must comply with certain other consumer protections in the Affordable Care Act, for example, the elimination of lifetime limits on benefits. Questions regarding which protections apply and which protections do not apply to a grandfathered health plan and what might cause a plan to change from grandfathered health plan status can be directed to the plan administrator at [insert contact information].” |  |
| 45 CFR  §147.140 (a)(3)(i)  WAC 284-43-0250(1) | The plan has maintained records documenting the terms of the plan in connection with the coverage that was in effect on March 23, 2010, and any other documents necessary to verify, explain or clarify its status as a grandfathered health plan; and |  |
| 45 CFR  §147.140 (g)(1)(i);  WAC  284-43-0250(3)(a) | **None of the following have occurred** that would cause the plan to lose grandfathered status:   * The plan has eliminated all or substantially all benefits to diagnose or treat a particular condition, where “substantially all” means benefits for any “necessary element to diagnose or treat a condition.” |  |
| 45 CFR  §147.140 (g)(1)(ii)  WAC  284-43-0250(3)(b) | * The plan has increased a percentage cost-sharing requirement (e.g., coinsurance). |  |
| 45 CFR  §147.140 (g)(1)(iii);  WAC 284-43-0250(3)(c) | * The plan has increased a fixed-amount cost-sharing requirement other than a co-payment (e.g., deductible or out-of-pocket limit) such that the total percentage increase since March 23, 2010 exceeds the maximum allowed increase (medical inflation as percentage + 15 percentage points). |  |
| 45 CFR  §147.140 (g)(1)(iv);  WAC  284-43-0250(3)(d) | * The plan has increased a fixed-amount copayment, such that the increase since March 23, 2010 exceeds the greater of: the maximum allowed increase (medical inflation + 15 percentage points), or $5 + medical inflation. |  |
| 45 CFR  §147.140 (g)(1)(vi);  WAC  284-43-0250(3)(f-h) | * The plan has added or decreased an overall annual limit on benefits. |  |
| 45 CFR  §147.140 (g)(1)(v);  WAC  284-43-0250(3)(e) | * There has been a decrease in the contribution rate by the employer (or employee organization) toward the cost of any tier of coverage for any class of similarly situated individuals by more than 5 percentage points below the contribution rate for the coverage period that includes March 23, 2010. |  |
| 45 CFR  §147.140 (a)(1)(ii) and (a)(3)(ii) | * The plan changed issuers after March 23, 2010, and the change was effective prior to November 15, 2010, and the plan provided documentation to the new issuer of the plan terms under the prior health coverage insufficient to determine whether any other change was made that would relinquish grandfather status. |  |
| 29 CFR 2590.715-1251(a)(1)(ii) | * The plan was self-insured and changed to fully-insured after March 23, 2010, and the change was effective prior to November 15, 2010, and the plan provided documentation to the new issuer of the plan terms under the prior health coverage insufficient to determine whether any other change was made that would relinquish grandfather status. |  |
| 45 CFR  §147.140 (b)(2)(i);  WAC  284-43-0250(5) | The plan has violated anti-abuse rules by:   * Engaging in a merger, acquisition, or business restructuring for the principal purpose of covering new individuals in a grandfathered plan. |  |
| 45 CFR  §147.140 (b)(2)(ii);  WAC 284-43-0270(1) | * Transferring employees from one grandfathered plan to another grandfathered plan, if treating the terms of the 2nd plan as an amendment to the 1st plan would cause the 1st to lose grandfathered status, and there is no bona fide employment-based reason. |  |
| WAC 284-43-0250(8) | Issuer must designate on its filings whether a plan is grandfathered or nongrandfathered as required by the Washington SERFF filing instructions. |  |
| 45 C.F.R.  §147.140(c) | The provisions of the ACA relating to coverage for individuals participating in approved clinical trials and to annual limits do not apply to grandfathered health plans. |  |
| 45 C.F.R.  §147.140(d) | The ACA prohibition on lifetime limits apply to grandfathered plans for plan years beginning on or after January 1, 2014. |  |
| 45 C.F.R.  §147.140(e);  42 U.S.C. §18011(d) | The ACA requirement for coverage of dependents up to age 26 apply to group grandfathered plans. |  |
| *Note: There are special rules for collectively-bargained plans.* |  |
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| 45 CFR  §147.140 (g)(3)(i) | Resources: ACA FAQs Part I (Q 2-6), Part II (Q 1-5), Part IV (Q 1-2), Part VI (Q1-6);  *See also*: DOL Checklist for Group Plans (www.dol.gov/ebsa/pdf/part7-2.pdf) and Compliance Assistance Guide ([www.dol.gov/ebsa/publications/CAG.html](http://www.dol.gov/ebsa/publications/CAG.html)) |  |
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| **Grievance Procedures** |  | RCW 48.43.005(26) | "Grievance" means a written complaint submitted by or on behalf of a covered person regarding service delivery issues other than denial of payment for medical services or nonprovision of medical services, including dissatisfaction with medical care, waiting time for medical services, provider or staff attitude or demeanor, or dissatisfaction with service provided by the health carrier. |  |
| RCW 48.43.530(8) | Does the contract provide a clear explanation of the grievance process? |  |
| RCW 48.43.530(9) | Is the grievance process accessible to enrollees who are limited English speakers, who have literacy problems, or who have physical or mental disabilities that impede their ability to file a grievance? |  |
| RCW  48.43.530(4)(c) | An issuer may not require that an enrollee file a complaint or grievance prior to seeking appeal of a decision or review of an adverse benefit determination. |  |
| WAC  284-43-4520(3) | Grievances are not adverse benefit determinations and do not establish the right to internal or external review of an issuer’s resolution of the grievance. |  |
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| **Group Certificates** |  | WAC 284-44-050  Fittro v. Lincoln Natl Life Ins. Co., 111 Wn.2d 46 (1988) | Does the certificate set forth in summary form the essential features of the coverage and who is covered?  If there is a conflict in language between the contract and certificate the certificate governs. |  |
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| **Group Enrollment Requirement**  **Group Enrollment Requirement**  **Group Enrollment Requirement** | No Pre-Existing Conditions | WAC 284-43-5000 | For plans with effective dates on or after 1/1/2014, there can be no preexisting condition exclusions. This does not apply to grandfathered plans. |  |
| Special Enrollment Periods  Special Enrollment Periods  (Cont’d) | 45 C.F.R. §146.117(a) | Plan can use open enrollment periods but must offer Special Enrollment where required. |  |
| 45 C.F.R.  §146.117(a)(3)(iv); 42 USC 300gg-3(a) | Plan can require employee declining coverage for self or any dependent to state in writing whether the coverage is being declined due to other coverage   * Employee must be provided notice of requirement and consequences of failure to provide statement * Plan cannot require more than the statement; e.g., that it be notarized   + If plan requires this statement and employee fails to provide it, plan is not required to provide special enrollment to the employee or any dependent |  |
| 45 C.F.R.  §146.117 | Does the plan offer enrollment to eligible persons regardless of open enrollment requirements (“special enrollment”), in the following situations: |  |
| 45 C.F.R.  §146.117 (a)(2)(i) | * Employee loses coverage   + If the employee didn’t enroll during open enrollment because they had other coverage |  |
| 45 C.F.R.  §146.117 (a)(2)(ii) | * Dependent loses coverage   + During open enrollment, the dependent had other coverage   + Allow both dependent and employee to enroll, but not any other dependents unless they also have their own special enrollment qualifying event |  |
| 45 C.F.R.  §146.117(a)  (3)(i–iii) | * Employee or any dependent loses other coverage (other than for nonpayment or fraud) due to:   + Divorce or legal separation   + Cessation of dependent status (e.g., reach maximum age)   + Death of an employee under whose coverage they were a dependent   + Termination or reduction in the number of hours worked   + Leaving the service area of former plan   + Meeting or exceeding lifetime limits on former plan (such as a non EHB service or Grandfathered plan)   + Discontinuation of former plan   + Discontinuation of employer contributions   + Exhaustion of COBRA continuation coverage |  |
| 45 C.F.R. §146.117(b)(2)(ii-iv) | Spouse or dependent becomes eligible for coverage (both current employee and spouse/dependent become eligible for special enrollment)   * Marriage (new dependents resulting from marriage included) * Birth, adoption, placement for adoption |  |
| RCW 48.43.517 | When the Health Care Authority requests special enrollment for a child participating in a medical assistance program under chapter 74.09 RCW within 60 days of making a determination that it is cost-effective to enroll the child in that plan. |  |
| RCW 48.43.005(34) | Does the special enrollment period last at least 31 days after the qualifying event? |  |
| 45 C.F.R. §146.117(a)(4)(ii); 5 CFR 146.117(a)(4);  45 C.F.R.  §146.117 (b)(3)(iii)(A) | Does coverage begin no later than the first day of the first calendar month beginning after the date the plan receives the request for special enrollment? |  |
| * Exceptions: When special enrollment qualifying event is:   + Marriage: coverage must begin no later than the first day of the first calendar month beginning after the date the issuer receives the request for special enrollment. |  |
| 45 C.F.R.  §146.117 (b)(3)(iii)(B) | * + Birth, adoption, placement for adoption, or new dependent as a result of marriage: Coverage begins on the date of dependent’s birth, adoption, placement for adoption, or marriage if new dependent resulting from marriage |  |
| 45 C.F.R.  §146.117(d)(1) | Even if the special enrollment happens to coincide with a late enrollment opportunity does the plan treat special enrollee as special enrollee, rather than late enrollee?   * Are special enrollees offered all benefit packages available to similarly situated enrollees who enroll when first eligible? |  |
| 45 C.F.R.  §146.117(d)(2) | Plan cannot have different terms for special enrollees: no higher rate, longer pre-existing condition exclusion if a grandfathered plan, different cost sharing.  *Resources:* DOL Checklist for Group Plans and Compliance Assistance Guide. |  |
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| **Guaranteed Issue**  **Guaranteed Issue** |  | 45 CFR §147.104(b)(1)(i) | Does the issuer offer to any employer or qualified group in the state all products approved for sale in that market at any time in the year? |  |
| 42 U.S.C.  §300gg-1;  RCW 48.43.035(1);  RCW 49.60.174(2);  RCW 48.44.220 | Issuer must accept for enrollment any state resident within the group to whom the plan is offered and within the carrier's service area and provide or assure the provision of all covered services regardless of age, sex, family structure, ethnicity, race, religion, national origin, health condition, geographic location, employment status socioeconomic status, the presence of any disability, other condition or situation, or actual or perceived status regarding HIV or Hepatitis C. |  |
| RCW  48.43.025 (1)  42 U.S.C.  §300gg-3 (b)(4);  42 U.S.C.  §300gg-7 | Issuer may not reject individual for coverage based upon preexisting conditions of the individual or deny, exclude, or limit coverage for an individual’s preexisting health conditions, but may impose up to a 90 day benefit waiting period before the individual is eligible for benefits under the plan. |  |
| 42 U.S.C.  §300gg-3(a)  45 CFR 147.108 | For plans with an effective date on or after 1/1/2014: No preexisting condition limitations are allowed.  *Resources*: DOL Checklist for Group Plans (www.dol.gov/ebsa/pdf/part7-2.pdf); Compliance Assistance Guide (www.dol.gov/ebsa/publications/CAG.html) |  |
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| **Guaranteed**  **Renewability** |  | 42 USC §300gg-2(a); 45 CFR 147.104(a) | Does the contract contain or incorporate by endorsement a guarantee of the continuity of coverage of the plan? (Issuer must renew or continue coverage at the option of the plan sponsor.) |  |
| RCW 48.43.035 (2) | * A plan is "renewed" when it is continued beyond the earliest date upon which, at the issuer's sole option, the plan could have been terminated for other than nonpayment of premium. The issuer may consider the group's anniversary date as the renewal date for purposes of complying with the provisions of this section. |  |
| 42 USC §300gg-2(b) | The issuer may cancel or nonrenew the plan for: |  |
| RCW  48.43.035(3)(a) | * Nonpayment of premium; |  |
| RCW  48.43.035(3)(b) | * Violation of published policies of the issuer approved by the OIC; |  |
| RCW 48.43.035(3)(c) | * Enrollees entitled to become eligible for Medicare due to age who fail to apply for Medicare or Medicare supplement plan, or other plan offered by the issuer pursuant to federal laws and regulations; |  |
| RCW  48.43.035(3)(d) | * Enrollees who fail to pay any deductible or copayment amount owed to the issuer and not the provider of health care services; |  |
| RCW  48.43.035(3)(e) | * Fraudulent acts as to the issuer; |  |
| RCW 48.43.035(3)(f) | * Material breach of the health plan; or |  |
| RCW  48.43.035(3)(g) | * Change or implementation of federal or state laws that no longer permit the continued offering of such coverage. |  |
| 42 USC  §300gg-2(c);  RCW 48.43.035(4) | Guaranteed renewability is not required in certain cases where the issuer discontinues a plan or leaves the service area or market, see RCW 48.43.035(4). |  |
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| **Hearing Instruments** |  | RCW 48.43.135(1) | Effective for group plans issued or renewed on or after **January 1, 2024,** a health carrier shall include coverage for hearing instruments, including bone conduction hearing devices. |  |
|  |  | RCW 48.43.135(2) | Coverage shall include the hearing instrument; |  |
|  |  |  | Initial assessment; |  |
|  |  |  | * Fitting to include adjustment; |  |
|  |  |  | * Auditory training; and |  |
|  |  |  | * Ear molds as necessary to maintain optimal fit. |  |
|  |  | RCW 48.43.135(3); WAC 284-43-5937(4) | The maximum benefit amount required by this section is $3,000 per ear with hearing loss every 36 months. Any enrollee cost-sharing applied to this coverage must ensure that the amount paid by the health plan will be no less than $3,000 except to the extent required otherwise in RCW 48.43.135(4). |  |
|  |  | RCW 48.43.135(4) | The benefit is not subject to the plan deductible unless the health plan is offered as a qualifying health plan for a health savings account (HSA). For a qualifying health plan, the carrier shall establish the plan's cost sharing for the coverage required at the minimum level necessary to preserve the enrollee's ability to claim tax exempt contributions and withdrawals from the enrollee's health savings account under internal revenue service laws and regulations. |  |
|  |  | RCW 48.43.135(5) | Coverage for a minor under 18 years of age shall be available under this section only after the minor has received medical clearance within the preceding six months from: |  |
|  |  |  | * An otolaryngologist for an initial evaluation of hearing loss; or |  |
|  |  |  | * A licensed physician, which indicates there has not been a substantial change in clinical status since the initial evaluation by an otolaryngologist. |  |
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| **Home Care and Hospice Coverage**  **Home Care and Hospice Coverage**  **(Cont’d)**  **Home Care and Hospice Coverage**  **(Cont’d)** | Home Care as an alternative to hospital-ization | WAC  284-44-500(1) | If the contract covers hospitalization or other institutional expenses, does it include as an alternative to hospitalization or other institutional care, substitution of home health care furnished by home health, hospice and home care agencies licensed under chapter [70.127](http://apps.leg.wa.gov/RCW/default.aspx?cite=70.127) RCW, at equal or lesser cost? |  |
| WAC  284-44-500(2) | Such expenses may include: coverage for durable medical equipment which permits the enrollee to stay at home, care provided in Alzheimer's centers, adult family homes, assisted living facilities, congregate care facilities, adult day health care, home health, hospice and home care, or similar alternative care arrangements which provide necessary care in less restrictive or less expensive environments. |  |
| WAC  284-44-500(3) | Is substitution of less expensive or less intensive services made only with the consent of the insured and upon the recommendation of the insured's attending physician or licensed health care provider, stating that such services will adequately meet the insured patient's needs? Is the decision to substitute less expensive or less intensive services determined based on the medical needs of the individual insured patient? |  |
| WAC  284-44-500(4) | The issuer may require that home health agencies or similar alternative care providers have written treatment plans which are approved by the insured patient's attending physician or other licensed health care provider. |  |
| WAC  284-44-500(5) | Coverage may be limited to no less than the maximum benefits which would be payable for hospital or other institutional expenses under the contract, and may include all deductibles and coinsurances which would be payable by the insured under the hospital or other institutional expense coverage of the insured's contract. |  |
| Home Care as an alternative to hospital-ization  (Cont’d) | RCW 48.44.320(1) | If the plan covers hospitalization, does the filing show that the issuer made an offer of optional coverage for home health care and hospice benefits for persons who are homebound and would otherwise require hospitalization? |  |
| RCW 48.44.320(2) | If the plan covers home health care and hospice care, does it conform to the following standards, limitations, and restrictions? |  |
| RCW 48.44.320(2)(g) | Does the home health care coverage provide benefits for a minimum of one hundred thirty health care visits per calendar year?   * A visit of any duration by an employee of a home health agency for the purpose of providing services under the plan of treatment constitutes one visit. |  |
| RCW 48.44.320(2)(e) | Does the coverage provide benefits for, and restrict benefits to, services rendered by home health and hospice agencies licensed under chapter [70.127](http://apps.leg.wa.gov/rcw/default.aspx?cite=70.127) RCW? |  |
| RCW  48.44.320(2)(b) | Is the coverage structured to create incentives for the use of home health care and hospice care as an alternative to hospitalization?   * The coverage may have the following characteristics: |  |
| RCW  48.44.320(2)(a) | * + include reasonable deductibles, coinsurance provisions, and internal maximums; |  |
| RCW  48.44.320(2)(c) | * + contain provisions for utilization review and quality assurance; |  |
| RCW  48.44.320(2)(d) | * + require that home health agencies and hospices have written treatment plans approved by a physician licensed under chapter [18.57](http://apps.leg.wa.gov/rcw/default.aspx?cite=18.57) or [18.71](http://apps.leg.wa.gov/rcw/default.aspx?cite=18.71) RCW, and may require such treatment plans to be reviewed at designated intervals; |  |
| RCW  48.44.320(2)(h) | * + The coverage may be structured so that services or supplies included in the primary contract are not duplicated in the optional home health and hospice coverage. |  |
| RCW 48.44.320(5) | The issuer, as a condition of reimbursement, may require compliance with home health and hospice certification regulations established by the United States Department of Health and Human Services. |  |
| RCW  48.44.320(2)(f) | Does the hospice care coverage provide benefits for terminally ill patients for an initial period of care of not less than six months?   * Coverage may provide benefits for an additional six months of care in cases where the patient is facing imminent death or is entering remission if certified in writing by the attending physician. |  |
| Long Term Care | RCW 48.43.125(1)(a) | Does the plan provide coverage for a person at a long-term care facility following the person's hospitalization? If so, it must, upon the request of the enrollee or their legal representative, provide such coverage at the facility in which the person resided immediately prior to the hospitalization if:   * The person's primary care physician determines that the medical care needs of the person can be met at the requested facility; |  |
| RCW 48.43.125(1)(b) | * The requested facility has all applicable licenses and certifications, and is not under a stop placement order that prevents the person's readmission; |  |
| RCW 48.43.125(1)(c) | * The requested facility agrees to accept payment from the carrier for covered services at the rate paid to similar facilities that otherwise contract with the carrier to provide such services; and; |  |
| RCW 48.43.125(1)(d) | * The requested facility, with regard to the following, agrees to abide by the standards, terms, and conditions required by the carrier of similar facilities with which the carrier otherwise contracts: (i) Utilization review, quality assurance, and peer review; and (ii) management and administrative procedures, including data and financial reporting that may be required by the carrier. |  |
| RCW 48.43.125(2) | * "Long-term care facility" or "facility" means a nursing facility licensed under chapter 18.51 RCW, continuing care retirement community defined under RCW 70.38.025, or assisted living facility licensed under chapter 18.20 RCW. |  |
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| **Mammograms** |  | RCW 48.44.325; RCW 48.43.078 | Does the contract provide benefits for screening to include Tomosynthesis or diagnostic mammography services, where such services are recommended by the patient's physician or advanced registered nurse practitioner? |  |
|  |  | RCW 48.43.076; RCW 48.21.225; WAC 284-44-046(3) | For plans issued or renewed, on or after January 1, 2024, health plans that provide coverage of supplemental breast examinations and diagnostic breast examinations, health carriers may not impose cost sharing for such examinations. |  |
|  |  |  | For a health plan that provides coverage of supplemental breast examinations and diagnostic breast examinations and is offered as a qualifying health plan for a health savings account (HSA), the health carrier shall establish the plan's cost sharing for the coverage of these services at the minimum level necessary to preserve the enrollee's ability to claim tax exempt contributions from their health savings account under internal revenue service laws and regulations. |  |
|  |  | WAC 284-44-046(4)(a) | "Diagnostic breast examination" means a medically necessary and appropriate examination of the breast, including an examination using diagnostic mammography, breast magnetic resonance imaging, or breast ultrasound, that is used to evaluate an abnormality: |  |
|  |  |  | * Seen or suspected from a screening examination for breast cancer; |  |
|  |  |  | * Or detected by another means of examination. |  |
|  |  | WAC 284-44-046(4)(b) | "Supplemental breast examination" means a medically necessary and appropriate examination of the breast, including an examination using breast magnetic resonance imaging or breast ultrasound, that is: |  |
|  |  |  | * Used to screen for breast cancer when there is no abnormality seen or suspected; and |  |
| **Mammograms** |  |  | * Based on personal or family medical history, or additional factors that may increase the individual's risk of breast cancer. |  |
|  |  | WAC 284-50-270(3) | * Coverage of mammograms may be subject to standard contract provisions, except the cost-sharing provisions prohibited by RCW 48.43.076, which may be applicable to other diagnostic X-ray benefits. |  |
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| **Maternity and Newborn**  **Services** |  | RCW 48.42.100(2) | Health care practitioners that provide women's health care services must include, but need not be limited to: |  |
|  |  | * Any generally recognized medical specialty of practitioners licensed under chapter [18.57](http://app.leg.wa.gov/RCW/default.aspx?cite=18.57) or [18.71](http://app.leg.wa.gov/RCW/default.aspx?cite=18.71) RCW who provides women's health care services; practitioners licensed under chapters [18.57A](http://app.leg.wa.gov/RCW/default.aspx?cite=18.57A) and [18.71A](http://app.leg.wa.gov/RCW/default.aspx?cite=18.71A) RCW when providing women's health care services; |  |
|  |  | * midwives licensed under chapter [18.50](http://app.leg.wa.gov/RCW/default.aspx?cite=18.50) RCW; and |  |
|  |  | * advanced registered nurse practitioner specialists in women's health and midwifery under chapter [18.79](http://app.leg.wa.gov/RCW/default.aspx?cite=18.79) RCW. |  |
|  | RCW 48.42.100(3); WAC 284-170-350(1)(a) | Women's health care services must include, but need not be limited to: Maternity care; reproductive health services, gynecological care, contraceptive services, testing and treatment for sexually transmitted diseases, pregnancy termination, breast feeding, complications of pregnancy, general examination, preventive care as medically appropriate and medically appropriate follow-up visits for these services and any appropriate health care service for other health problems, discovered and treated during the course of a visit to a women's health care practitioner for a women's health care service, which is within the practitioner's scope of practice. |  |
| **Maternity and Newborn**  **Services (Cont’d)** | Required termination of pregnancy coverage  Required termination of pregnancy coverage | RCW 48.43.073(1) | Health plans issued or renewed on or after January 1, 2019, that provide coverage for maternity care or services, must also provide a covered person with substantially equivalent coverage to permit the abortion of a pregnancy. |  |
| RCW 48.43.073(1)(b) | Health plans issued or renewed on or after January 1, 2024 may not impose cost sharing for abortion of a pregnancy. |  |
| RCW 48.43.073(1)(c) | Health plans that provide coverage for abortion of pregnancy and is offered as a qualifying health plan for a health savings account (HSA) must establish the plans cost sharing at the minimum level necessary to preserve the enrollee’s ability to claim tax exempt contribution and withdrawals from the enrollee’s health savings account under internal revenue service laws and regulations. |  |
| RCW 48.43.073(2)(b)(i) | Coverage for the abortion of a pregnancy may be subject to terms and conditions generally applicable to the health plan's coverage of maternity care or services. |  |
|  | RCW 48.43.073  (2)(b)(ii) | A Health plan is not required to cover abortions that: |  |
|  | * Are unlawful under RCW [9.02.120](http://app.leg.wa.gov/RCW/default.aspx?cite=9.02.120) |  |
|  | RCW 48.43.065 | * Are exempted per RCW 48.43.065 |  |
|  | RCW 48.43.065(3)(b) | * The provisions of this section shall not result in an enrollee being denied coverage of, and timely access to, any service or services excluded from their benefits package as a result of their employer's or another individual's exercise of the conscience clause |  |
|  | RCW 48.43.725 | A health carrier that excludes, under state or federal law, any benefit required or mandated by this title or rules adopted by the commissioner from any health plan or student health plan shall:   * + (Provide written notice to enrollees, which benefits the plan does not cover; listing services that the carrier refuses to cover for reason of conscience or religion; and   + Alternate ways in which enrollees may access excluded benefit information in an timely manner; and   + Clearly and legibly include this information in any of its marketing materials that include a list of benefits covered under the plan. The information must also be listed in the benefit booklet and posted on the carrier's health plan or student health plan web site. |  |
| Women’s Direct Access | RCW 48.43.100(4) | Female enrollees must have direct access to timely and appropriate covered women's health care services from the type of health care practitioner of their choice for appropriate covered women’s health care services without the necessity of prior referral from another type of health care practitioner. |  |
|  | RCW 48.42.100(4) WAC 284-170-350(3)(b) | * Plan may restrict women’s direct access to in-network providers, but must not limit access to a subset of participating women's health care practitioners within the network. Such an impermissible limitation might arise when a primary care provider's group practice receives a capitation payment for comprehensive care to an enrollee and then represents to the enrollee that only those gynecologists in the primary care provider's clinic are available for direct access. |  |
| **Maternity and Newborn**  **Services (Cont’d)** | Women’s Direct Access  (Cont’d) | WAC 284-170-350(1)(b) | * Plan must not exclude or limit access to covered women's health care services offered by a particular type of women's health care provider, practitioner, or facility in a manner that would unreasonably restrict access to that type of provider, practitioner, or facility or covered service. For example, plan must not require all child birth to occur in a hospital attended by a physician, thus preventing a woman from choosing between and using the birthing services of an advanced registered nurse practitioner, a certified midwife, or a licensed midwife. |  |
|  |  | RCW 48.42.100 | * Plan must cover medically necessary supplies for a home birth. WAC 284-170-350(2). |  |
|  |  | WAC 284-170-350(1)(c) | * Plan must not require notification or prior authorization for women's health care practitioners, providers, and facilities unless such requirements are imposed upon other providers offering similar types of service. E.g.,, plan must not require a directly accessed women's health care practitioner to notify the plan within seven days of providing direct women's health care services if a primary care provider would not also be required to provide seven-day notice for the same or similar service. |  |
| WAC 284-170-350(2) | * Plan must not deny coverage for medically appropriate laboratory, imaging, or diagnostic services, or prescriptions for pharmaceutical or medical supplies, ordered by a directly accessed women's health care practitioner within the practitioner's scope of practice, if such services would be covered when provided by another type of health care practitioner. |  |
|  |  | * Plan must not require authorization by another type of health care practitioner for these services. For example, if plan would cover a prescription written by the primary care provider, the issuer must cover that prescription if written by the directly accessed women's health care practitioner |  |
| WAC 284-170-350(4) | Contract must include a written explanation of a woman's right to directly access covered women's health care services, including information regarding any limitations to direct access, including, but not limited to:   * Limited direct access based on a benefit plan's closed network of practitioners, if appropriate; and * The issuer's right to limit coverage to medically necessary and appropriate women's health care services. |  |
| **Maternity and Newborn**  **Services (Cont’d)** | Women’s Direct Access  (Cont’d) | WAC 284-170-350(5) | Plan may not impose cost-sharing for directly accessed women's health care services that is not required for access to primary care providers. |  |
| RCW 48.44.344 | Prenatal diagnosis of congenital disorders by screening/diagnostic procedures if medically necessary. |  |
|  |  | RCW 48.43.115(3)(f) | Must provide newborn coverage that is not less than the postnatal coverage for the mother, for no less than three weeks; and |  |
|  |  | RCW 48.43.115(3) “Erin Act” | * The plan must provide notice that the health care provider in consultation with the mother will determine the care and length of hospital stay. * If length of stay guideline is stated it must be no less than: 48-hour normal birth/96 caesarian section birth * The plan cannot restrict follow-up care when ordered by the attending provider in consultation with the mother. (“Newborns’ and Mothers’ Health Protection Act of 1996”) |  |
|  |  | RCW 48.43.115(3)(a) | * Plan must permit the attending provider, in consultation with the mother, to make decisions on the length of inpatient stay. These decisions must be based on accepted medical practice. |  |
|  | RCW 48.43.115(3)(b) | * Plan may not deny covered, eligible services for inpatient, postdelivery care to a mother and her newly born child after a vaginal delivery or a cesarean section delivery that is ordered by the attending provider in consultation with the mother. |  |
| RCW 48.43.115(3)(c) | * At the time of discharge, determination of the type and location of follow-up care must be made by the attending provider in consultation with the mother rather than by contract or agreement between the hospital and the issuer. These decisions must be based on accepted medical practice. |  |
|  |  | RCW 48.43.115(3)(d) | * Plan may not deny covered, eligible services for follow-up care, including in-person care, as ordered by the attending provider in consultation with the mother. Coverage for providers of follow-up services must include, but need not be limited to, attending providers, home health agencies licensed under chapter [70.127](http://app.leg.wa.gov/RCW/default.aspx?cite=70.127) RCW, and registered nurses licensed under chapter [18.79](http://app.leg.wa.gov/RCW/default.aspx?cite=18.79) RCW. |  |
| RCW 48.43.115(3)(e) | This section does not require attending providers to authorize care they believe to be medically unnecessary. |  |
| **Maternity and Newborn**  **Services (Cont’d)** | Required Coverage of donor breast milk | RCW 48.43.815 | **A health plan issued or renewed on or after January 1, 2023,** shall provide coverage for medically necessary donor human milk for inpatient use when ordered by a licensed health care provider with prescriptive authority or an international board certified lactation consultant certified by the international board of lactation consultant examiners for an infant who is: |  |
|  |  |  | * medically or physically unable to receive maternal human milk or participate in chest feeding or whose parent is medically or physically unable to produce maternal human milk in sufficient quantities or caloric density or participate in chest feeding. |  |
|  |  |  | * If the infant meets at least one of the following criteria: |  |
|  |  |  | * + An infant birth weight of below 2,500 grams; or |  |
|  |  |  | * + An infant gestational age equal to or less than 34 weeks; or |  |
|  |  |  | * + Infant hypoglycemia; or |
|  |  |  | * + A high risk for development of necrotizing enterocolitis, bronchopulmonary dysplasia, or retinopathy of prematurity; or |
|  |  |  | * + A congenital or acquired gastrointestinal condition with long-term feeding or malabsorption complications; or |
|  |  |  | * + Congenital heart disease requiring surgery in the first year of life; or |
|  |  | * + An organ or bone marrow transplant; or |
|  |  | * + Sepsis; or |
|  |  | * + Congenital hypotonias associated with feeding difficulty or malabsorption; or |
|  |  | * + Renal disease requiring dialysis in the first year of life; or |
|  |  | * + Craniofacial anomalies; or |
|  |  | * + An immunologic deficiency; or |
|  |  |  | * + Neonatal abstinence syndrome; or |
|  |  |  | * + Any other serious congenital or acquired condition for which the use of pasteurized donor human milk and donor human milk derived products is medically necessary and supports the treatment and recovery of the child; or |
|  |  |  | * + Any baby still inpatient within 72 hours of birth without sufficient human milk available. |
|  |  |  |  |  |
| **Medical Director** |  | RCW 48.43.540 | Does the issuer have a medical director licensed under Chapter 18.57 or 18.71 RCW (i.e., licensed as a D.O. or M.D.)? |  |
|  |  |  |  |  |
| **Medical Necessity** | Requirements of Medical  Necessity Determin - ation Process | WAC 284-43-5440(2)(a) | * Contract must specifically explain issuer's medical necessity determination process. |  |
|  | WAC 284-43-5440(2)(b) | * Process must:   + be conducted fairly, and with transparency to enrollees and providers, at a minimum when an enrollee or their representative appeals or seeks review of an adverse benefit determination; |  |
|  |  | WAC 284-43-5440(2)(c) | * + Include consideration of services that are a logical next step in reasonable care if they are appropriate for the patient; |  |
|  |  | WAC 284-43-5440(2)(d) | * + Identify the information needed in the decision-making process and incorporate appropriate outcomes within a developmental framework; |  |
|  |  | WAC 284-43-5440(2)(e) | * + Ensure that when the interpretation of the medical purpose of interventions is part of the medical necessity decision making, the interpretation standard can be explained in writing to an enrollee and providers, and is broad enough to address any of the services encompassed in the ten essential health benefits categories of care; |  |
|  |  | WAC 284-43-5440(2)(f) | * + Comply with inclusion of the ten essential health benefits categories; |  |
|  | WAC 284-43-5440(2)(g) | * + Not discriminate based on age, present or predicted disability, expected length of life, degree of medical dependency, quality of life or other health conditions, race, gender, national origin, sexual orientation and gender identity; |  |
|  |  | WAC 284-43-5440(2)(h) | * + Include consideration of the treating provider's clinical judgment and recommendations regarding the medical purpose of the requested service, and the extent to which the service is likely to produce incremental health benefits for the enrollee; |  |
|  |  | WAC 284-43-5440(2)(i) | * + Identify by role who will participate in the issuer's medical necessity decision-making process; and |  |
|  |  | WAC 284-43-5440(2)(j) | * + Ensure that where medically appropriate, and consistent with the health benefit plan's contract terms, an enrollee is not unreasonably restricted as to the site of service delivery. |  |
| **Medical Necessity (Cont’d)** | Requirements of Medical  Necessity Determin - ation Process | WAC 284-43-5440(3) | * Medical necessity determination process may include, but is not limited to, evaluation of the effectiveness and benefit of a service for the individual patient based on scientific evidence considerations, up-to-date and consistent professional standards of care, convincing expert opinion and a comparison to alternative interventions, including no interventions. Cost effectiveness may be one of but not the sole criteria for determining medical necessity. |  |
|  |  | WAC 284-43-5440(4) | * Within thirty days of receiving a request, an issuer must furnish its medical necessity criteria for any or all essential health benefit categories to an enrollee or provider. |  |
|  |  |  |  |  |
| **Medically Necessary Dental Anesthesia** |  | RCW 48.43.185(1) | Whether or not the plan covers dental services, does the contract cover general anesthesia services and related facility charges in conjunction with any dental procedure performed in a hospital or ambulatory surgical center if such anesthesia services and related facility charges are medically necessary because the covered person:   * Is under the age of seven, or physically or developmentally disabled, with a dental condition that cannot be safely and effectively treated in a dental office; or * Has a medical condition that the person's physician determines would place the person at undue risk if the dental procedure were performed in a dental office? (The procedure must be approved by the person's physician.) |  |
| RCW 48.43.185(2) | If the plan provides dental coverage, does it cover medically necessary general anesthesia services in conjunction with any covered dental procedure performed in a dental office if the general anesthesia services are medically necessary because the covered person is under the age of seven or physically or developmentally disabled? |  |
| RCW 48.43.185(3) | Issuer may apply cost-sharing, maximum annual limits, and prior authorization to these services; can limit to in-network providers, and negotiate provider rates. |  |
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| **Mental Health or Substance Use Disorder**  **(“MH/SUD”)**  **Mental Health or Substance Use Disorder**  **(“MH/SUD”) (Cont’d)**  **Mental Health or Substance Use Disorder**  **(“MH/SUD”) (Cont’d)**  **Mental Health or Substance Use Disorder**  **(“MH/SUD”) (Cont’d)**  **Mental Health or Substance Use Disorder**  **(“MH/SUD”) (Cont’d)** | Benefit  Requirement and Definitions  Benefit  Requirement and Definitions  (Cont’d) | RCW 48.44.341 | Does the plan define “Mental Health Services” consistent with RCW 48.44.341(1)(a)?  “medically necessary outpatient and inpatient services provided to treat mental health and substance use disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on June 11, 2020, or such subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of chapter 6, Laws of 2005.” |  |
| RCW 48.44.240 | Does the health plan provide SUD benefits by an “approved treatment program” under RCW 70.96A.020(2)? |  |
| RCW 48.44.245;  WAC 284-43-7010 | Does the plan define Substance Use Disorder/Chemical Dependency consistent with RCW 48.44.245 and WAC 284-43-7010?   * “Chemical dependency means an illness characterized by a physiological or psychological dependency, or both, on a controlled substance regulated under chapter [**69.50**](http://app.leg.wa.gov/RCW/default.aspx?cite=69.50) RCW and/or alcoholic beverages. It is further characterized by a frequent or intense pattern of pathological use to the extent the user exhibits a loss of self-control over the amount and circumstances of use; develops symptoms of tolerance or physiological and/or psychological withdrawal if use of the controlled substance or alcoholic beverage is reduced or discontinued; and the user's health is substantially impaired or endangered or his or her social or economic function is substantially disrupted.” * “Substance use disorder means a substance-related or addictive disorder listed in the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association” |  |
| RCW 48.44.341(2) | Does the plan provide mental health services and prescription drugs intended to treat any disorder covered under the definition of mental health services?   * If there is a MOOP or stop loss, it must be a single limit or stop loss for medical, surgical, and mental health services. |  |
| RCW 48.44.342 | No preauthorization for mental health treatment rendered by a state hospital if the enrollee or covered dependent is involuntarily committed. |  |
|  | RCW 48.44.341 | * Plan must provide mental health services. WAC 284-43-5642(5)(e)(i) |  |
|  | RCW 48.44.241 | * Plan must provide chemical dependency detoxification services. See, also, WAC 284-43-5642(5)(e)(ii) |  |
|  | RCW 48.44.341 | * Plan must provide services delivered pursuant to involuntary commitment proceedings. Plan must waive preauthorization requirements in this situation. WAC 284-43-5642(5)(e)(iii) |  |
| Parity Requirement  Parity Requirement (Cont’d) | P.L. 110-343  Wellstone / Domenici Mental Health Parity and Addiction Equity Act of 2008 (“MHPAEA”) | Does the plan apply any financial requirement or treatment limitation to mental health or substance use disorder benefits that is more restrictive than those applied to medical/surgical benefits?  No separate deductible for mental health benefits. |  |
| RCW 48.44.341(2) | Does the health plan provide MH/SUD benefits in every classification in which medical/surgical benefits are provided? WAC 284-43-7020(1) |  |
| WAC 284-43-7020 | 6 Classifications: Inpatient, in-network; inpatient, out-of-network; outpatient, in-network; outpatient, out-of-network; emergency care; and prescription drugs. Outpatient services may be subclassified into office visits and all other outpatient items and services |  |
| WAC  284-43-7020(3) | * In classifying a particular benefit, a plan must apply the same standards to medical/surgical benefits and MH/SUD benefits. An issuer must classify covered intermediate MH/SUD benefits, e.g., residential treatment, partial hospitalization, and intensive outpatient treatment, in the same way that it classifies comparable intermediate medical/surgical benefits. E.g., if a plan classifies skilled nursing facility care as inpatient benefits, then it must also treat residential mental health treatment as inpatient benefits. If home health care is classified as an outpatient benefit, then intensive outpatient mental health or substance use disorder services and partial hospitalization must be classified as outpatient benefits. |  |
| WAC  284-43-7020(4) | Parity analysis must be done for each classification and applies to all treatment limitations (frequency of treatment, number of visits, days of coverage, days in a waiting period, or other similar limits on the scope or duration of treatment). Look at: |  |
| WAC 284-43-7040 | * **Quantitative treatment limitations**: expressed numerically (such as fifty outpatient visits per year) * Includes annual, episode, and lifetime day and visit limits. |  |
| WAC 284-43-7060; WAC 284-43-7010 | * **Nonquantitative treatment limitations** (“NQTL”): processes, strategies, or evidentiary standards, or other factors that are not expressed numerically, but otherwise limit the scope or duration of benefits for treatment. Includes, but not limited to: * limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative; * Formulary design; * methods for determining usual, customary, and reasonable charges; * Use of fail-first policies or step therapy protocols; * Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit scope or duration of benefits * A permanent exclusion of all benefits for a particular condition or disorder is not a NQTL; may be allowable if not otherwise prohibited |  |
| WAC  284-43-7060(2) | Plan standards: in-and-out-of-network geographic limitations, limitations on inpatient services for situations where the participant is a threat to self or others, exclusions for court-ordered and involuntary holds, experimental treatment limitations, service coding, exclusions for services provided by clinical social workers, and network adequacy |  |
| WAC 284-43-7020 (6)(c and d) | If a health plan or issuer classifies providers into tiers, and varies cost-sharing based on the different tiers, there must not be any financial requirement or treatment limitation on MH/SUD benefits that is more restrictive than what applies to substantially all medical/surgical benefits in that tier. |  |
| WAC  284-43-7060(1) | No NQTL may be imposed on MH/SUD in any classification unless any processes, strategies, evidentiary standards or other factors used to apply the NQTL to MH/SUD benefits are in parity with those used to apply it to medical/surgical benefits in the same classification. |  |
|  |
| Prohibited Exclusions | WAC  284-43-7080(1) | Benefits for actual treatment and services rendered may not be denied solely because a course of treatment was interrupted or was not completed. |  |
| WAC  284-43-7080(2) | If a service is prescribed for a mental health condition and is medically necessary, it may not be denied solely on the basis that it is part of a category of services or benefits that is excluded by the terms of the contract. |  |
| WAC  284-43-7080(3) | Benefits for MH/SUD may not be limited or denied based solely on age or condition. |  |
| WAC 284-43-7080(4) | When a treatment or service is gender affirming treatment, as defined in RCW [48.43.0128](http://app.leg.wa.gov/RCW/default.aspx?cite=48.43.0128), a health carrier may not: |  |
|  | WAC 284-43-7080(4)(a) | Deny or limit coverage, deny or limit coverage of a claim, issue automatic denials of coverage or impose additional cost sharing or other limitations or restrictions on coverage if that treatment is: |  |
|  | (i) | Prescribed to an individual because of, related to, or consistent with a person's gender expression or identity, as defined in RCW [49.60.040](http://app.leg.wa.gov/RCW/default.aspx?cite=49.60.040); |  |
|  | (ii) | Medically necessary; and |  |
|  | (iii) | Prescribed in accordance with accepted standards of care; or |  |
|  | WAC 284-43-7080(4)(b) | Apply blanket exclusions; or |  |
|  | WAC 284-43-7080(4)(c) | When prescribed as medically necessary, exclude facial gender affirming treatment (such as tracheal shaves), hair removal procedures, and other care (such as mastectomies, breast reductions, breast implants, or any combination of gender affirming procedures, including revisions to prior treatment) as cosmetic services. |  |
|  | WAC 284-43-7080(5) | Medically necessary benefits for MH/SUD treatment may not be denied solely because they were court ordered. |  |
| Required Disclosures | WAC 284-43-7100 | Does the policy inform enrollees of their rights to free information, including:   * access to and copies of all information relevant to a claim * the criteria, processes, strategies, evidentiary standards and other factors used to make medical necessity determinations of MH/SUD benefits and apply an NQTL to medical/surgical and MH/SUD benefits under the plan? |  |
| WAC 284-170-200(8) | Issuer must disclose that limitations or restrictions on access to participating providers and facilities may arise from the health service referral and authorization practices of the issuer. The description of referral and authorization practices may be included in the summary of benefits and explanation of coverage. |  |
| Withdrawal Coverage Require - ments | RCW 48.43.761 (2)(a)(i) | A health plan must:  Provide coverage for no less than two business days, excluding weekends and holidays, in a behavioral health agency that provides inpatient or residential substance use disorder treatment prior to conducting a utilization review; and |  |
|  |  | RCW 48.43.761 (2)(a)(ii) | * Provide coverage for no less than three days in a behavioral health agency that provides withdrawal management services prior to conducting a utilization review. |  |
|  |  | RCW 48.43.761(2)(b) | * A health plan may not require an enrollee to obtain prior authorization for the services as a condition for payment of services prior to the times specified. |  |
| **Mental Health or Substance Use Disorder**  **“MH/SUD” (Cont’d)** | Withdrawal Coverage Require – ments  (Cont’d) |  | Once the times specified have passed, the health plan may initiate utilization management review procedures if the behavioral health agency continues to provide services or is in the process of arranging for a seamless transfer to an appropriate facility or lower level of care under RCW 48.43.761(6). |  |
| RCW 48.43.761 (2)(c)(iii) | * After the required time period has passed and receipt of required material, the plan may initiate a medical necessity review process, based on the standard set of criteria. |  |
|  |  | If the health plan determines within one business day from the start of the medical necessity review period and receipt of the required material that the admission to the facility was not medically necessary and advises the agency of the decision in writing, the health plan is not required to pay the facility for services delivered after the start of the medical necessity review period, subject to the conclusion of a filed appeal of the adverse benefit determination. |  |
|  |  |  | * If the health plan's medical necessity review is completed more than one business day after start of the medical necessity review period and receipt of the required material, the health plan must pay for the services delivered from the time of admission until the time at which the medical necessity review is completed and the agency is advised of the decision in writing. |  |
| RCW 48.43.761 (5)(a) | If the behavioral health agency is not in the enrollee's network:   * The health plan is not responsible for reimbursing the behavioral health agency at a greater rate than would be paid had the agency been in the enrollee's network; and |  |
|  |  | RCW 48.43.761 (5)(b) | The behavioral health agency may not balance bill, as defined in [RCW 48.43.005(6).](https://app.leg.wa.gov/RCW/default.aspx?cite=48.43.005) |  |
| RCW 48.43.761(6) | * When the treatment plan approved by the health plan involves transfer of the enrollee to a different facility or to a lower level of care, the care coordination unit of the health plan shall work with the current agency to make arrangements for a seamless transfer as soon as possible to an appropriate and available facility or level of care. |  |
|  |  |  | The health plan shall pay the agency for the cost of care at the current facility until the seamless transfer to the different facility or lower level of care is complete. |  |
|  |  |  | * A seamless transfer to a lower level of care may include same day or next day appointments for outpatient care, and does not include payment for nontreatment services, such as housing services. |  |
| **“MH/SUD” (Cont’d)** |  |  | * If placement with an agency in the health plan's network is not available, the health plan shall pay the current agency until a seamless transfer arrangement is made. |  |
|  |  | RCW 48.43.761(7) | * The requirements of this section do not apply to treatment provided in out-of-state facilities. |  |
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| **Neuro-develop-**  **mental**  **Therapy** |  | RCW 48.44.450(1)  O.S.T. v. Regence BlueShield, No. 88940-6 (WN October 9, 2014).  RCW 48.44.450(2)  RCW 48.44.450(3) | Does the contract provide benefits for neurodevelopment therapies?   * Must provide benefits for mental health diagnoses (Diagnoses listed in the DSM) without any “blanket limitations” (e.g., age six and under) * Services covered must include physical, speech, and occupational therapies. * Benefits shall be payable only where the services have been delivered pursuant to the referral and periodic review of a holder of a license issued pursuant to chapter 18.71 or 18.57 RCW or where covered services have been rendered by such licensee. * Benefits shall be provided to restore and improve function, and for the maintenance of a covered individual in cases where significant deterioration in the patient's condition would result without the service. * Benefits must be for medically necessary services. |  |
| RCW 48.44.450(4) | * Benefits may not be subject to annual or lifetime dollar limits, but may be subject to visit limits, deductible, cost sharing, and requirements for written treatment plans. * The contract may not exclude or limit coverage for assessment or testing to determine the amount and type of neurodevelopmental therapy needed. |  |
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| **Non-Discrimin-ation** | Non-Discrimination Notice | RCW 48.43.0128; WAC 284-43-5980(1) | The issuer must file a Non Discrimination Notice to include: |  |
|  |  | WAC 284-43-5980(1)(a) | * That the issuer does not discriminate on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation in its benefits and services; |  |
|  |  | 45 CFR § 92.102(b); WAC 284-43-5980(1)(b) | * The issuer provides appropriate auxiliary aids and services, including qualified interpreters for individuals with disabilities and information in alternate formats, free of charge and in a timely manner, when such ai;ds and services are necessary to ensure an equal opportunity to participate to individuals with disabilities; |  |
| **Non-Discrimin-ation (Cont’d)** | Non-Discrimination Notice (Cont’d) | 45 CFR § 92.101(2); WAC 284-43-5980(1)(c) | * The issuer provides language assistance services, including translated documents and oral interpretation, free of charge and in a timely manner, when such services are necessary to provide meaningful access to individuals with limited English proficiency; and |  |
|  |  | WAC 284-43-5980(1)(d) | * How to obtain these aids and services; and |  |
|  |  | WAC 284-43-5980(1)(e) | * Identify and provide contact information for the employee responsible for compliance with RCW 48.43.0128 and WAC 284-43-5935 through 284-43-5980; and |  |
|  |  | WAC 284-43-5980(1)(f) | * How to file a grievance with the issuer related to the issuers compliance with RCW 48.43.0128 and WAC 284-43-5935 through 284-43-5980; and |  |
|  |  | WAC 284-43-5980(1)(g) | * Identify the office of the insurance commissioner as the designated entity to file a complaint regarding compliance with RCW 48.43.0128 and WAC 284-43-5935 through 284-43-5980 and the federal Department of Health and Human Services, Office of Civil Rights as the designated entity to file a complaint regarding compliance related to the issuer's compliance with 42 U.S.C. Sec. 18119 (Sec. 1557 of the Affordable Care Act). Until that date, issuers may continue to use the sample notice published at 81 Fed. Reg. 31472 through 31473 (May 18, 2016). |  |
|  |  | WAC 284-43-5980(4) | Taglines in at least the top 15 languages spoken by individuals with limited English proficiency of the relevant State or States. |  |
|  |  | WAC 284-43-5980(7) | Contract must include, in a conspicuously visible font size, notice of the requirements shown in WAC 284-43-5980(1) and (4); and |  |
|  | WAC 284-43-5980(7)(a)(i) | This notice must be included in;   * Significant publications and significant communications targeted to enrollees, applicants, and members of the public, except for significant publications and significant communications that are small-sized, such as postcards and tri-fold brochures; |  |
|  |  | WAC 284-43-5980(7)(a)(ii) | * In conspicuous physical locations where the issuer interacts with the public; and |  |
|  |  | WAC 284-43-5980(7)(a)(iii) | * In a conspicuous location on the issuer's website accessible from the home page of the issuer's website. |  |
|  |  | WAC 284-43-5980(8) | In significant publications and significant communications that are small-sized, such as postcards and tri-fold brochures: |  |
|  |  | WAC 284-43-5980(9) | An issuer may combine the content of the notice required in WAC 284-43-5980(1) with the content of the other notices required in WAC 284-43-5980 if the combined notice clearly informs individuals of their rights under RCW [48.43.0128](http://app.leg.wa.gov/RCW/default.aspx?cite=48.43.0128) and WAC [284-43-5935](http://app.leg.wa.gov/WAC/default.aspx?cite=284-43-5935) through 284-43-5980 and 42 U.S.C. Sec. 18119 (Sec. 1557 of the Affordable Care Act). |  |
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| **PKU** |  | RCW 48.44.440(2);  WAC 284-44-450(2) | Does the contract provide the formulas necessary for the treatment of PKU?  Coverage may be limited to the usual and customary charge for such formulas |  |
|  |  | WAC 284-44-450(3) | Coverage may be subject to deductibles and cost sharing only to the extent that deductibles and cost sharing are applied to general expenses incurred for common sicknesses or disorders under the provisions of the plan. |  |
|  |  | WAC 284-44-450(4) | No increased premiums, preexisting condition provisions, cancellations or nonrenewal due to an enrollee using this benefit or having phenylketonuria. |  |
|  |  | WAC  284-44-450(2)(c) | * A contract that provides benefits for hospital services only or for custodial services only may limit the coverage for PKU formulas to formula used during time such services are provided. |  |
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| **Prescription Drug Coverage**  **Prescription Drug Coverage (Cont’d)**  **Prescription Drug Coverage (Cont’d)**  **Prescription Drug Coverage (Cont’d)**  **Prescription Drug Coverage (Cont’d)**  **Prescription Drug Coverage (Cont’d)**  **Prescription Drug Coverage (Cont’d)**  **Prescription Drug Coverage (Cont’d)** | Contraceptive  Care  (If RX benefits offered) | WAC 284-43-5150(1) | **This section applies only to plans that cover prescription drugs UNLESS OTHERWISE STATED AS REQUIRED**  It is an unfair practice for any carrier to restrict, exclude, or reduce coverage on the basis  of sex |  |
| WAC  284-43-5150(2)(a) | * Must not exclude coverage of prescription drugs and devices including associated medical services for prescribing, dispensing, delivery, distribution, administration and removal of contraceptive devices; |  |
|  | WAC  284-43-5150(2)(b) | * Benefit waiting period, limitations, or restrictions on Rx contraceptives may not be more restrictive than those required of other Rx benefits |  |
| WAC  284-43-5150(2)(d) | * Carrier may limit to closed formulary but it shall cover each required type |  |
|  | WAC 284-43-5150(2)(f) | "Prescription contraceptives" include United States Food and Drug Administration (FDA) approved contraceptive drugs, devices, and prescription barrier methods including: |  |
|  | * + contraceptive products declared safe and effective for use as emergency contraception by the FDA.); |  |
|  | RCW 48.43.072(1) | * + over-the counter contraceptive drugs, devices and products approved by the FDA; |  |
|  | * + Voluntary sterilization procedures; |  |
|  | RCW 48.43.072(1)(c) | * consultations, examinations, procedures, and medical services that are necessary to prescribe, dispense, insert, deliver, distribute, administer, or remove the drugs, devices, and other products or services as required by law. |  |
| Required Coverage  Required Coverage (Cont’d) | RCW 48.43.072(2)(a);  RCW  48.43.072(1) | * For a qualifying health plan, the carrier must establish the plan's cost sharing for the coverage required by law at the minimum level necessary to preserve the enrollee's ability to claim tax exempt contributions and withdrawals from his or her health savings account under internal revenue service laws and regulations; and |  |
| RCW 48.43.072(2)(b) | * May not require a prescription to trigger coverage of over-the-counter contraceptive drugs, devices, and products, approved by the federal food and drug administration. |  |
| RCW  48.43.072(3) | * A health carrier may not deny the coverage required in subsection (1) of this section because an enrollee changed his or her contraceptive method within a twelve-month period. |  |
| RCW 48.43.072(2)(a);  RCW  48.43.072(1) | * For a qualifying health plan, the carrier must establish the plan's cost sharing for the coverage required by law at the minimum level necessary to preserve the enrollee's ability to claim tax exempt contributions and withdrawals from his or her health savings account under internal revenue service laws and regulations; and |  |
| RCW  48.43.072(2)(a) | Plan may not require copayments deductibles, or other forms of cost sharing, unless the health plan is offered as a qualifying health plan for a health savings account. |  |
| RCW 48.43.072(4) | Except as otherwise authorized, a health benefit plan may not impose any restrictions or delays on the coverage required under this section, such as medical management techniques that limit enrollee choice in accessing the full range of contraceptive drugs, devices, or other products, approved by the federal food and drug administration. |  |
| RCW 48.43.072(5) | Benefits provided under RCW 48.43.072 must be extended to all enrollees, enrolled spouses, and enrolled dependents. |  |
| RCW 48.43.072 (6) | Plan may not allow for denial of care on the basis of race, color, national origin, sex, sexual orientation, gender expression or identity, marital status, age, citizenship, immigration status, or disability. |  |
| RCW 48.43.072 (7) | A health plan or student health plan, including student health plans deemed by the insurance commissioner to have a short-term limited purpose or duration or to be guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, **issued or renewed on or after January 1, 2021**, may not issue automatic initial denials of coverage for reproductive health care services that are ordinarily or exclusively available to individuals of one gender, based on the fact that the individual's gender assigned at birth, gender identity, or gender otherwise recorded in one or more government-issued documents, is different from the one to which such health services are ordinarily or exclusively available |  |
| RCW 48.43.072(9) | * The requirements in RCW 48.43.072 may not be construed to authorize discrimination on the basis of gender identity or expression, or perceived gender identity or expression, in the provision of nonreproductive health care services. |  |
| WAC 284-43-5150(2)(a) | Plan must not cover prescription contraceptives on a less favorable basis than other covered prescription drugs and prescription devices. Coverage of prescription contraceptives includes coverage for medical services associated with the prescribing, dispensing, delivery, distribution, administration and removal of a prescription contraceptive to the same extent, and on the same terms, as other outpatient services. |  |
| WAC 284-43-5150(2)(b) | Plan may not impose benefit waiting periods, limitations, or restrictions on prescription contraceptives that are not required or imposed on other covered prescription drugs and prescription devices. |  |
| WAC 284-43-5150(2)(d) | Issuer may use, and Plan may limit coverage to, a closed formulary for prescription contraceptives if they otherwise use a closed formulary, but the formulary shall cover each of the types of prescription contraception defined above. |  |
| RCW 48.43.195 | A health benefit plan issued or renewed on or after January 1, 2018, that includes coverage for contraceptive drugs must provide reimbursement for a twelve-month refill of contraceptive drugs obtained at one time by the enrollee, unless the enrollee requests a smaller supply or the prescribing provider instructs that the enrollee must receive a smaller supply.  The health plan must allow enrollees to receive the contraceptive drugs on-site at the provider's office, if available. Any dispensing practices required by the plan must follow clinical guidelines for appropriate prescribing and dispensing to ensure the health of the patient while maximizing access to effective contraceptive drugs. |  |
| Required Coverage (Cont’d) | WAC 284-43-5642(6)(a)(iv) and (v) | Certain preventive medications including, but not limited to, aspirin, fluoride, and iron, and medications for tobacco use cessation, according to, and as recommended by, the United States Preventive Services Task Force, when obtained with a prescription order; and Medical foods to treat inborn errors of metabolism. |  |
|  | 48.43.176 (1)(a) | Plan must provide coverage for medically necessary elemental formula, regardless of delivery method, when a licensed physician or other health care provider with prescriptive authority diagnoses a patient with an eosinophilic gastrointestinal associated disorder. |  |
| Cost sharing requirements | RCW 48.43.430 | The applicable cost sharing for the prescription medication must be;   * The amount the person would pay for the prescription medication if the person purchased the prescription medication without using a health plan. |  |
|  |  | A health carrier or pharmacy benefit manager may not require a pharmacist to dispense a brand name prescription medication when a less expensive therapeutically equivalent generic prescription medication is available |  |
|  |  | "pharmacy benefit manager" has the same meaning as in RCW 48.200.020(12) |  |
|  | [**ESHB 1957**](https://app.leg.wa.gov/billsummary?BillNumber=1957&Initiative=false&Year=2023)**;** 45 CFR §147.130(b)(1) | **Plan must cover services and supplies related to PrEP** (preexposure prophylaxis). SEE [FAQS ABOUT AFFORDABLE CARE ACT IMPLEMENTATION PART 47](https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-47.pdf) |  |
|  | RCW 48.44.465 | An HCSC may not retract an authorization issued by any means on a pharmacy claim. |  |
| RCW 48.43.435(1)(a) | Effective January 1, 2023 - A health carrier offering a nongrandfathered health plan with a pharmacy benefit, or a health care benefit manager administering benefits for the health carrier, shall include any cost-sharing amounts paid by the enrollee directly or on behalf of the enrollee by another person when calculating an enrollee's contribution to any applicable cost-sharing or out-of-pocket maximum for a covered prescription drug that is either: |  |
|  | (1)(a)(i) | Without a generic equivalent; or |  |
|  | (1)(a)(ii) | With a generic equivalent where the enrollee has obtained access to the drug through: |  |
| (1)(a)(ii)(A) | Prior authorization; |  |
| (1)(a)(ii)(B) | Step therapy; or |  |
|  | (1)(a)(ii)(C) | The prescription drug exception request process under RCW 48.43.420. |  |
| Cost sharing requirements (Cont’d) | RCW 48.43.435 (2) | Any cost-sharing amounts paid directly by or on behalf of the enrollee by another person for a covered prescription drug under subsection (1) of this section shall be applied towards the enrollee's applicable cost-sharing or out-of-pocket maximum in full at the time it is rendered. |  |
|  | RCW 48.43.435(5) | This requirement does not apply to a qualifying health plan for a health savings account (HSA) to the extent necessary to preserve the enrollee's ability to claim tax exempt contributions and withdrawals from the enrollee's health savings account under internal revenue service laws, regulations, and guidance. |  |
| Sole Available Drug Therapy | WAC 284-43-5060(1) | Plan must cover all FDA-approved prescribed drugs, medications or drug therapies that are the sole prescription drug available for a covered medical condition. |  |
| No Unreasonable Restrictions | WAC 284-43-5060 | * Prescription drug benefit must not be such that it results or can reasonably be expected to result in an unreasonable restriction on the treatment of patients. |  |
|  | WAC 284-43-5060(2) | * + A prescription drug benefit that only covers generic drugs constitutes an unreasonable restriction on the treatment of patients. |  |
|  | WAC 284-43-5060(3) | * + Prescription drug benefit or formulary must not exclude coverage for a nonformulary drug or medication if the only formulary drug available for an enrollee's covered condition is one that the enrollee cannot tolerate or that is not clinically efficacious for the enrollee. |  |
|  | WAC 284-43-5200(1) | * Plan may not impose dollar limits, copayments, deductibles or coinsurance requirements on coverage for orally administered anticancer drugs or chemotherapy that are less favorable to an enrollee than those that apply to coverage for anticancer medication or chemotherapy that is administered intravenously or by injection. |  |
|  | WAC 284-43-5200(2) | * + Issuer may not reclassify an anticancer medication or increase an enrollee's out-of-pocket costs as a method of compliance with these requirements. |  |
| Coverage of Drugs for Off-Label Use | WAC 284-30-450(4)(a) | * Plan must not exclude coverage of any FDA-approved prescription drug for a particular indication on the grounds that the drug has not been approved by the FDA for that indication, if it is recognized as effective for treatment of that indication: |  |
|  | 450(4)(a)(i) | * + In one of the standard reference compendia; |  |
|  | 450(4)(a)(ii) | * + In the majority of relevant peer-reviewed medical literature if not recognized in one of the standard reference compendia; or |  |
|  | 450(4)(a)(iii) | * + By the Federal Secretary of Health and Human Services. |  |
|  | 450(4)(b) | * Coverage of a drug for such “off-label” use must also include medically necessary services associated with the administration of the drug. |  |
|  | 450(4)(c) | * Coverage for off-label use is not required when the FDA has determined its use to be contra-indicated. |  |
|  | 450(4)(d) | * Coverage is not required for experimental drugs not otherwise approved for any indication by the FDA. |  |
| Allowable Limitations on | WAC 284-43-5060 | * Plan may restrict prescription drug coverage based on contract or plan terms and conditions that otherwise limit coverage, such as medical necessity. |  |
| Prescription Drug Services | WAC 284-43-5060(4) | * Prescribers may use "Dispense as Written" prescriptions (prescriptions which do not allow substitution of a generic or therapeutic equivalent drug for the drug prescribed), subject to the terms and conditions of the health plan. |  |
| Emergency  Fill | WAC 284-43-5170(1)(c) | Contract must include a clear statement explaining consumers may be eligible to receive an emergency fill for prescription drugs under the circumstances described in [WAC 284-170-470](https://apps.leg.wa.gov/wac/default.aspx?cite=284-170-470) and include the process for obtaining an emergency fill and include any cost sharing requirements, for an emergency fill. |  |
| Oral Anticancer Medication | RCW 48.44.323 | If the plan covers cancer chemotherapy, it must provide coverage for prescribed, self-administered anticancer medication. The plan may use a formulary, require prior auth, or impose other appropriate utilization controls on this coverage, but must cover oral chemo on a basis at least comparable to chemo medications administered by a provider or facility. |  |
| Oral Chemo-therapy | WAC 284-43-5200 | * Plan must provide coverage for prescribed, self- administered anticancer medication on a basis at least comparable to cancer chemotherapy medications administered by a health care provider or facility. |  |
|  | WAC 284-43-5200(1) | * + Plan may not impose dollar limits, copayments, deductibles or coinsurance requirements on coverage for orally administered anticancer drugs or chemotherapy that are less favorable to an enrollee than those that apply to coverage for anticancer medication or chemotherapy that is administered intravenously or by injection. |  |
|  | WAC 284-43-5200(2) | * + Issuer may not reclassify an anticancer medication or increase an enrollee's out-of-pocket costs as a method of compliance with these requirements. |  |
| Coordination/ Synchron-ization of Prescriptions | RCW 48.43.096(1) | Issuer must have a prescription synchronization/coordination policy for the dispensing of prescription drugs to the plan's enrollees. |  |
| RCW 48.43.096(1)(a);  RCW 48.43.096(1)(a)(i) | If an enrollee requests medication synchronization for a new prescription, the health plan must permit filling the drug:   * for less than a one-month supply of the drug if synchronization will require more than a fifteen-day supply of the drug; or |  |
| RCW 48.43.096  (1)(a)(ii) | * for more than a one-month supply of the drug if synchronization will require a fifteen-day supply of the drug or less. |  |
| RCW 48.43.096(1)(b) | * The health benefit plan shall adjust the enrollee cost-sharing for a prescription drug subject to coinsurance that is dispensed for less than the standard refill amount for the purpose of synchronizing the medications. |  |
| RCW 48.43.096(1)(c) | * The health benefit plan shall adjust the enrollee cost-sharing for a prescription drug with a copayment that is dispensed for less than the standard refill amount for the purpose of synchronizing the medications by: |  |
| RCW 48.43.096(1)(c)(i) | * + Discounting the copayment rate by fifty percent; |  |
| RCW 48.43.096(1)(c)(ii) | * + Discounting the copayment rate based on fifteen-day increments; or |  |
| RCW 48.43.096(1)(c)(iii) | * + Any other method that meets the intent of this section and is approved by the office of the insurance commissioner. |  |
| RCW 48.43.096(2) | Upon request of an enrollee, the prescribing provider or pharmacist shall: |  |
| RCW 48.43.096(2)(a) | * Determine that filling or refilling the prescription is in the best interest of the enrollee, taking into account the appropriateness of synchronization for the drug being dispensed; |  |
| RCW 48.43.096(2)(b) | * Inform the enrollee that the prescription will be filled to less than the standard refill amount for the purpose of synchronizing his or her medications; and |  |
| RCW 48.43.096(2)(c) | * Deny synchronization on the grounds of threat to patient safety or suspected fraud or abuse. |  |
| RCW 48.43.096(3)(a) | * "Medication synchronization" means the coordination of medication refills for a patient taking two or more medications for a chronic condition such that the patient's medications are refilled on the same schedule for a given time period. |  |
|  | RCW 48.43.096(3)(b) | * "Prescription" has the same meaning as in RCW 18.64.011. |  |
| Pharmacists – Eye Drop Refills | RCW 18.64.530 | Forms may not include any provision conflicting with the following:  A pharmacist is authorized, without consulting a physician or obtaining a new prescription or refill authorization from a physician, to provide for one early refill of a prescription for topical ophthalmic products if: |  |
|  | RCW 18.64.530(1) | • The refill is requested by a patient at or after seventy percent of the predicted days of use of |  |
|  | (1)(a) | * + The date the original prescription was dispensed to the patient; or |  |
|  | (1)(b) | * + The date that the last refill of the prescription was dispensed to the patient; |  |
|  | RCW 18.64.530(2) | * + The prescriber indicates on the original prescription that a specific number of refills will be needed; and |  |
|  | RCW 18.64.530(3) | * + The refill does not exceed the number of refills that the prescriber indicated. |  |
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| **Prior Authorization** | Transparency of Standards and Criteria | RCW 48.43.016(1) | * If the plan or its contracted entity imposes different prior authorization standards and criteria for a covered service among tiers of contracting providers of the same licensed profession, the contract must inform enrollees which tier an individual provider or group of providers is in by posting the information on its web site in a manner accessible to both enrollees and providers. |  |
| **Prior Authorization**  **(Cont’d)** |  | RCW 48.43.016(3) | Plan must post on its web site and provide upon the request of a covered person or contracting provider any prior authorization standards, criteria, or information the carrier uses for medical necessity decisions. |  |
|  | Prohibited Practices | RCW 48.43.016  (2)(a) | * A health carrier or its contracted entity may not require utilization management or review of any kind including, but not limited to, prior, concurrent or postservice authorization for an initial evaluation and management visit and up to six treatment visits with a contracted provider in a new episode of care of chiropractic, physical therapy, occupational therapy, Eastern medicine, massage therapy, or speech and hearing therapies. Visits for which utilization management or review is prohibited under this section are subject to quantitative treatment limits of the health plan. |  |
|  |  |  | * Plan may require a referral or prescription for these therapies, other than chiropractic. RCW 48.43.515(5). |  |
|  |  | RCW 48.43.016 (2)(b) | * For visits for which utilization management or review is prohibited under this section, a health carrier or its contracted entity may not: |  |
|  |  | (2)(b)(i) | * Deny or limit coverage on the basis of medical necessity or appropriateness; or |  |
|  |  | (2)(b)(ii) | Retroactively deny care or refuse payment for the visits. |  |
|  |  | RCW 48.43.016(3) | * Plan must post on its web site and provide upon the request of a covered person or contracting provider any prior authorization standards, criteria, or information the carrier uses for medical necessity decisions. |  |
|  |  | RCW 48.43.016  (7)(a) | * "New episode of care" means treatment for a new or recurrent condition for which the enrollee has not been treated by the provider within the previous ninety days and is not currently undergoing any active treatment. |  |
|  |  | RCW 48.43.810 | Must exempt an enrollee from prior authorization requirements for coverage of biomarker testing for either of the following: |  |
|  |  |  | * Stage 3 or 4 cancer; or |  |
|  |  |  | * Recurrent, relapsed, refractory, or metastatic cancer. |  |
| **Prior Authorization**  **(Cont’d)** | Issuer must Consult with Licensed Provider in Field Being Reviewed | RCW 48.43.016(4) | * Any provider with whom the issuer consults regarding a decision to deny, limit, or terminate covered services must hold a license, certification, or registration, in good standing and must be in the same or related health field as the provider being reviewed or of a specialty which entails the same or similar covered health care service. |  |
|  | No Required Discounts | RCW 48.43.016(5) | * Issuer may not require a provider to provide a discount from usual and customary rates for health care services not covered under a health plan, policy, or other agreement, to which the provider is a party. |  |
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| **Prostate Cancer Screening** |  | RCW 48.44.327(1) | Each contract that provides coverage for hospital or medical expenses must provide coverage for prostate cancer screening, provided that the screening is delivered upon the recommendation of the patient's physician, advanced registered nurse practitioner, or physician assistant. |  |
| RCW 48.44.327(2) | Issuer may apply deductible or copayment provisions applicable to other benefits. |  |
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| **Provider**  **Requirements**    **Provider**  **Requirements**  **(Cont’d)**  **Provider**  **Requirements**  **(Cont’d)** | Right to choose PCP  Right to choose PCP (Cont’d) | 42 U.S.C.  §300gg-19a(a);  45 CFR §147.138(a)(1)(i) | Does the contract allow the enrollee to choose any PCP who is accepting new enrollees from a list of participating providers? |  |
| RCW 48.43.515(2);  45 CFR §147.138(a)(2)(i); WAC 284-170-360(2) | If the plan requires designation of a PCP, does it allow a child to designate a pediatrician (allopathic or osteopathic) who is in-network and able to accept the child? |  |
| 45 CFR §147.138 (a)(3)(i)(B) | Does the plan treat the provision of obstetrical and gynecological care, and the ordering of related services and items, as being authorized by a PCP? |  |
| 45 CFR 147.138(a)(4)(i) | If the plan requires designation of a primary care provider (“PCP”), does the contract inform each enrollee of the terms of the plan regarding designation of a PCP and of their rights? |  |
| 45 CFR 147.138(a)  (4)(iii)(A) | May use this model language:   * For plans that require or allow for the designation of primary care providers by enrollees:   “[Name of group health plan or health insurance issuer] generally [requires/allows] the designation of a primary care provider. You have the right to designate any primary care provider who participates in our network and who is available to accept you or your family members. [If the plan or health insurance coverage designates a primary care provider automatically, insert: Until you make this designation, [name of group health plan or health insurance issuer] designates one for you.] For information on how to select a primary care provider, and for a list of the participating primary care providers, contact the [plan administrator or issuer] at [insert contact information].” |  |
| 45 CFR 147.138(a)  (4)(iii)(B) | * For plans that require or allow for the designation of a primary care provider for a child, add:   “For children, you may designate a pediatrician as the primary care provider.” |  |
| 45 CFR 147.138(a)  (4)(iii)(C) | * For plans that provide coverage for obstetric or gynecological care and require the designation by an enrollee of a primary care provider, add:   “You do not need prior authorization from [name of group health plan or issuer] or from any other person (including a primary care provider) in order to obtain access to obstetrical or gynecological care from a health care professional in our network who specializes in obstetrics or gynecology. The health care professional, however, may be required to comply with certain procedures, including obtaining prior authorization for certain services, following a pre-approved treatment plan, or procedures for making referrals. For a list of participating health care professionals who specialize in obstetrics or gynecology, contact the [plan administrator or issuer] at [insert contact information].” |  |
| Right to Change PCP | RCW 48.43.515 (2)  WAC 284-170-360(1) | Does the contract or certificate of coverage permit changing primary care providers at any time, becoming effective no later than the beginning of the month following the request? |  |
| Continuation of Care Upon Provider Termination | RCW 48.43.515(7) | If the plan **is** subject to an open enrollment period, does the contract allow an enrollee whose PCP’s contract is being terminated from the plan to continue care under the terms of the contract until the end of the next open enrollment period? |  |
| WAC 284-170-360(6)(a) | If the plan **is not** subject to an open enrollment period, does the contract allow an enrollee whose PCP’s contract is being terminated from the plan to continue care under the terms of the contract for at least sixty (60) days following notice of termination to the enrollee? |  |
| Participating Providers | RCW 48.44.010(14); WAC 284-43-0160(26) | Plan must define “Participating Provider” consistent with WAC 284-43-0160(26): "Participating provider” means a provider, under a contract with the health carrier or with the carrier's contractor or subcontractor, who has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, from the health carrier rather than from the covered person." |  |
| WAC  284-170-421(2) | If any conflict between provider contract and health benefit contract, health benefit contract governs. Provider contract may not modify health benefit contract. |  |
| WAC  284-170-421(3)(a) | Contract may not contain any provision conflicting with requirement that:   * Participating or in-network Provider may not bill enrollee for covered services except for deductible, co-payments, or coinsurance; |  |
| WAC  284-170-421(3)(b) | In the event of issuer’s insolvency, provider must continue to provide benefits until the later of:   * the end of the policy period for which the enrollee paid premiums; or * The person’s discharge from inpatient facilities. |  |
| WAC  284-170-421(3)(d) | * Provider or facility may not bill the enrollee for covered services (except for deductibles, copayments, or coinsurance) where {name of issuer} denies payments because the provider or facility has failed to comply with the terms or conditions of this contract. |  |
| Second Opinion | RCW 48.43.515(6) | Each carrier must provide, upon the request of an enrollee, access by the enrollee to a second opinion regarding any medical diagnosis or treatment plan from a qualified participating provider of the enrollee's choice. |  |
| WAC 284-170-360(5) | Issuer may not impose any charge or cost on the enrollee for the second opinion other than what would be imposed for the same service in otherwise similar circumstances. |  |
| Specialists | RCW 48.43.515(4) | Does the contract provide for appropriate and timely referral of enrollees to a choice of specialists within the plan if specialty care is warranted? |  |
| WAC 284-170-330(4) | If the type of medical specialist needed for a specific condition is not represented on the specialty panel, enrollees must have access to nonparticipating specialty health care providers at in-network rates. |  |
| Specialist Standing Referral | RCW  48.43.515(3);  WAC 284-170-360(3) | Does the contract or certificate of coverage explain that you may request a standing referral to a specialist for an extended period of time if you have a complex or serious medical or psychiatric condition? Must be consistent with the enrollee’s medical or psychiatric needs and plan benefits. |  |
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| **Reconstructive**  **Breast Surgery** |  | RCW 48.44.330(1) | Does the contract provide coverage for reconstructive breast surgery resulting from a mastectomy which resulted from disease, illness, or injury? |  |
| RCW 48.44.330(2) | Must provide coverage for all stages of one reconstructive breast reduction on the nondiseased breast to make it equal in size with the diseased breast after definitive reconstructive surgery on the diseased breast. |  |
| WHCRA, 29 USC §1185b (a) | * Must include all stages of reconstructive surgery on the affected breast, prostheses, and treatment of physical complications of the mastectomy, including lymphedema. |  |
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| **Rescissions Prohibited** | Both Grand-fathered and non-grand-fathered plans | 42 USC § 300gg-12 | Issuer may not rescind coverage with respect to an individual (including a group to which the individual belongs or family coverage under which the individual is included) once the individual is covered, UNLESS: |  |
|  | 45 CFR §147.128(a)(1) | * Individual (or someone seeking coverage on his behalf) performs an act, practice, or omission that constitutes fraud, or |  |
|  |  | * Makes an intentional misrepresentation of material fact, as prohibited by the terms of the plan or coverage. |  |
|  |  | 45 CFR §147.128(a)(1) | At least 30 days’ written notice must be provided to each affected participant. |  |
| 45 CFR §147.128(a)(2) | Rescission means cancellation or discontinuance of coverage that has retroactive effect; *e.g*., a cancellation that treats a policy as void from the time of the individual's or group's enrollment, or a cancellation that voids benefits paid up to a year before the cancellation. A cancellation or discontinuance of coverage is not a rescission if: |  |
|  |  | 45 CFR §147.128(a)(2)(i) | * The cancellation or discontinuance of coverage has only a prospective effect; or |  |
|  |  | 45 CFR §147.128(a)(2)(ii) | * The cancellation or discontinuance of coverage is effective retroactively to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage.   *See, also:* ACA FAQs Part II |  |
|  |  |  |  |  |
| **Retrospective Denial** |  | RCW 48.43.525 (1) | Carrier cannot retrospectively deny coverage for emergency and nonemergency care that had prior authorization under the plan’s written policies at the time the care was rendered. |  |
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| **Standard of Care** |  | RCW 48.43.545 | Issuer may not attempt to waive, shift, or modify its responsibility to adhere to the accepted standard of care for health care providers when arranging for medically necessary health care for enrollees. Issuer is liable for any harm proximately caused by its failure to follow the standard of care when the failure results in denial, delay, or modification of the health care service recommended for, or furnished to, the enrollee. This includes all the issuer’s employees, agents, or ostensible agents. |  |
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| **Subrogation** |  | Thiringer v. American  Motors Ins.,  91 WN 2d 215, 588 P.2d 191 (1978) | If the contract includes a subrogation provision, does it:   * Make clear that the issuer is entitled only to excess after the enrollee is fully compensated * The Contract must not have any provision which would inappropriately require full reimbursement for all medical expenses. |  |
| WAC 284-44-040(7); Mahler v. Szucs | The contract cannot unreasonably restrict or delay the payment of benefits. Delays are not justified because the expenses incurred, or the services received, resulted from an act or omission of a third party. |  |
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| **Telemedicine** | Requirement for Coverage | RCW  48.43.735(1)(a);  WAC  284-43-5622(6) | * Telemedicine or telehealth services are considered a method of accessing services, and are not a separate benefit for purposes of the essential health benefits package. Issuers must provide coverage for a service provided via telemedicine or store and forward technology if: |  |
|  |  | RCW  48.43.735(1)(a)(i) | * + the service would be covered when provided in person; and |  |
| **Telemedicine** | Requirement for Coverage | RCW  48.43.735(1)(a)(ii) | * + the service is medically necessary; and |  |
|  |  | RCW  48.43.735(1)(a)(iii) | * + the service is an EHB; |  |
|  |  | RCW  48.43.735(1)(a)(iv) | * + - the health care service is determined to be safely and effectively provided through telemedicine or store and forward technology according to generally accepted health care practices and standards, and the technology used to provide the health care service meets the standards required by state and federal laws governing the privacy and security of protected health information; and |  |
|  |  | RCW  48.43.735(1)(a)(v) | * + - for audio-only telemedicine, the covered person has an established relationship with the provider. |  |
|  |  | RCW  48.43.735(2) | * + - Reimbursement of store and forward technology is available only for those covered services specified in the negotiated agreement between the health carrier and the health care provider. |  |
|  | Rules  For “Originating  Sites” | RCW 48.43.735  (3)(a) | * An originating site for a telemedicine health care service includes a:   + Hospital; |  |
|  | (3)(b) | * + Rural health clinic; |  |
|  | (3)(c) | * + Federally qualified health center; |  |
|  |  | (3)(d) | * + Physician's or other health care provider's office; |  |
|  |  | (3)(e) | * + Community mental health center; |  |
|  |  | (3)(f) | * + Skilled nursing facility; or |  |
| **Telemedicine (Cont’d)** |  | (3)(g) | * + Home |  |
|  | (3)(h) | * + Renal dialysis center, except an independent renal dialysis center. |  |
|  | RCW 48.43.735(4) | * Any originating site except a home may charge a facility fee for infrastructure and preparation of the patient. Reimbursement must be subject to a negotiated agreement between the originating site and the health plan. A distant site or any other site not identified above may not charge a facility fee. |  |
|  | RCW 48.43.735(5) | * Plan may not distinguish between originating sites that are rural and urban in providing this coverage. |  |
|  | RCW 48.43.735(6) | * Coverage of telemedicine may be subject to all terms and conditions of the plan, including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance applicable to the service when provided in person. |  |
|  |  | RCW 48.43.735(7) | * Plan does not have to pay for originating site professional fees; service that is not covered; or an out-of-network originating site or provider. |  |
|  | Definitions | RCW 48.43.735(9) (a)(i) | * "Audio-only telemedicine" means the delivery of health care services through the use of audio-only technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. |  |
|  |  | RCW 48.43.735(9) (a)(ii) | * “Audio Only” telemedicine does not include: |  |
|  |  | RCW 48.43.735(9) (a)(ii)(A) | * The use of facsimile or email; or |  |
|  |  | RCW 48.43.735(7) (a)(ii)(B) | * The delivery of health care services that are customarily delivered by audio-only technology and customarily not billed as separate services by the provider, such as the sharing of laboratory results; |  |
|  |  | RCW  48.43.735  (9)(c) | * “Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through telemedicine. |  |
|  |  | RCW 48.43.735 (9)(d) | * “Established relationship" means the provider providing audio-only telemedicine has access to sufficient health records to ensure safe, effective, and appropriate care services and |  |
|  |  | RCW 48.43.735 (9)(d)(i)(A) | * The covered person has had, within the past three years, at least one in-person appointment, or at least one real-time interactive appointment using both audio and video technology, with the provider providing audio-only telemedicine or with a provider employed at the same medical group, at the same clinic, or by the same integrated delivery system operated by a carrier licensed under chapter 48.44 or 48.46 RCW as the provider providing audio-only telemedicine; or |  |
|  |  | RCW 48.43.735 (9)(d)(i)(B) | * The covered person was referred to the provider providing audio-only telemedicine by another provider who has had, within the past three years, at least one in-person appointment, or at least one real-time interactive appointment using both audio and video technology, with the covered person and has provided relevant medical information to the provider providing audio-only telemedicine; |  |
| **Telemedicine (Cont’d)** | Definitions (Cont’d) | RCW 48.43.735 (9)(g) | * "Originating site" means the physical location of a patient receiving health care services through telemedicine; |  |
|  |  | RCW 48.43.735  (9)(i) | * "Store and forward technology" means use of an asynchronous transmission of a covered person's medical information from an originating site to the health care provider at a distant site which results in medical diagnosis and management of the covered person, and does not include the use of audio-only telephone, facsimile, or email. |  |
|  |  | RCW 48.43.735 (9)(j) | “Telemedicine” means the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. Telemedicine does not include audio-only telephone, fax, or email. |  |
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| **Temporo-mandibular Joint Benefits (Mandated offer)** | Both Grand-fathered and non-grand-fathered plans | RCW 48.44.460(1);  WAC 284-44-042(1) | Does the group’s application form show that the issuer offered the group optional coverage for the treatment of temporomandibular joint (TMJ) disorders? |  |
| RCW 48.44.460(1)(a) | * If the plan is medical only, benefits may be limited to medical services related to treatment of TMJ disorders, but cannot define all TMJ disorders as purely dental. * If the plan is dental only, benefits may be limited to dental services related to treatment of TMJ disorders, but cannot define all TMJ disorders as purely medical. |  |
| WAC  284-44-042(1)(a) | * + Coverage must be generally the same as for other services of that kind (medical, dental), but the plan may require: |  |
| WAC  284-44-042(1)  (a)(i), (b)(i) and (c)(i);  WAC  284-44-042(1)  (a)(ii), (b)(ii), and (c)(ii);  WAC  284-44-042(1)(a)(iii); (b)(iii), and (c)(iii) | * + - Services to be rendered or referred by the primary care physician or dentist     - A second opinion (but the enrollee must not be responsible for costs for this)     - Preauthorization     - No second opinion or preauthorization can be required for treatment that began within 48 hours (or as soon as reasonably possible) after the occurrence of an accident or trauma to the TMJ |  |
| WAC 284-44-042(3) | No discriminatory practices against people submitting TMJ claims or providers who provide services for TMJ within the scope of their licenses |  |
|  | * The benefits can be negotiated (e.g., covered services, medical necessity determinations, provider networks and referral |  |
|  | The offer of optional coverage must be on the application form(s). If there is no application form, other proof must be kept by the issuer. |  |
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| **Timely Filing** | Standard Master  Contract | WAC 284-43-6560(1) | Was the contract filed before being offered for sale to the public? |  |
| Negotiated  Groups | WAC 284-43-6560(2) | Was the contract filed within 30 working days of:   * Completion of Group Negotiation, or * Premium Renewal Date? |  |
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| **Transgender Services** |  | 42 USC §18116;  RCW 48.30.300;  RCW 49.60.040 (25) and (26) | Broad exclusions of coverage, and denial of a medically necessary service, on the basis of gender identity are prohibited. This prohibition applies in the issuance, cancellation, or renewal of any contract of insurance, as well as amount of benefits payable, or any term, rate, condition, or type of coverage offered. A plan may not limit or exclude otherwise covered services on the basis that the insured/enrollee identifies as a transgender or requires the service for treatment of gender identity disorder or gender dysphoria. |  |
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| **Unfair and Discriminatory Practices**  **Unfair and Discriminatory Practices (Cont’d)**  **Unfair and Discriminatory Practices (Cont’d)**  **Unfair and Discriminatory Practices (Cont’d)**  **Unfair and Discriminatory Practices (Cont’d)**  **Unfair and Discriminatory Practices (Cont’d)** | Discrimination Prohibited | RCW 48.44.110;  RCW 48.44.120;  RCW 48.44.140 | No person shall make, publish, or disseminate any false, deceptive, or misleading representation or advertising on behalf of a HCSC. Nor shall the terms of a contract be misrepresented or misleading comparisons be made to induce an member to terminate or retain a contract or membership. |  |
| Cost Sharing Levels | WAC 284-43-5800(5) | * If plan has cost-sharing structures or tiers for EHBs, they must not be discriminatory. |  |
|  | WAC 284-43-5800(5)(a) | Plan must not apply cost-sharing or coverage limitations differently to enrollees with chronic disease or complex underlying medical conditions than to other enrollees, unless the difference provides the enrollee with access to care and treatment commensurate with the enrollee's specific medical needs, without imposing a surcharge or other additional cost to the enrollee beyond normal cost-sharing requirements under the plan. |  |
|  | WAC 28443-  5800(5)(b) | Plan must not establish a different cost-sharing structure or tier for a benefit than is applied to the plan in general if the sole type of enrollee who would access that benefit or benefit tier is one with a chronic illness or medical condition. |  |
| Discrimination  Prohibited | RCW 48.43.0128 (1)(a) | A health plan may not, in its benefit design or implementation of its benefit design, discriminate against individuals because of their age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions; or |  |
|  | RCW 48.43.0128 (1)(b) | * discriminate on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation. |  |
|  | RCW 48.43.0128 (2) | * Nothing in this section may be construed to prevent an issuer from appropriately utilizing reasonable medical management techniques. |  |
|  | WAC 284-43-5940(1)(iv) | * + Deny or limit coverage, deny or limit coverage of a claim, issue automatic denials of coverage or impose additional cost sharing or other limitations or restrictions on coverage, for any health services that are ordinarily or exclusively available to individuals of one sex, based on the fact that an individual's sex assigned at birth, gender identity, or gender otherwise recorded is different from the one to which such health services are ordinarily or exclusively available. For example, a denial of coverage for medically necessary hormone prescriptions for transgender, gender nonconforming, or intersex individuals because the dosages exceed those typically prescribed for cisgender people would be discriminatory against transgender, nonbinary, gender nonconforming, or intersex individuals; |  |
|  | WAC 284-43-5940(1)(v) | Have or implement a categorical coverage exclusion or limitation for all medical, surgical, or behavioral health services related to a person's gender identity or sexual orientation; or |  |
| WAC 284-43-5940(1)(vi) | Otherwise deny or limit coverage, deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, for specific medical, surgical, or behavioral health services related to a person's gender identity or sexual orientation if such denial, limitation, or restriction results in discrimination against a transgender, nonbinary, gender nonconforming or intersex individual. |  |
| Discrimination on basis of health factor prohibited –  In general | 42 U.S.C.  §300gg-4(a);  45 CFR §146.121  (a)(1) | “Health Factor” means, in relation to an individual:   * Health status; * Medical condition (including both physical and mental illnesses),    + “Medical condition or condition means any condition, whether physical or mental, including, but not limited to, any condition resulting from illness, injury (whether or not the injury is accidental), pregnancy, or congenital malformation. However, genetic information is not a condition. * Claims experience; * Receipt of health care; * Medical history; * Genetic information, * Evidence of insurability; or * Disability |  |
| 45 CFR §146.121(a)(2); 45 CFR §144.103 | * “Evidence of Insurability” includes conditions arising out of acts of domestic violence and participation in activities such as motorcycling, snowmobiling, all-terrain vehicle riding, horseback riding, skiing, and other similar activities. * “Medical condition or condition means any condition, whether physical or mental, including, but not limited to, any condition resulting from illness, injury (whether or not the injury is accidental), pregnancy, or congenital malformation. However, genetic information is not a condition. |  |
| 45 CFR §146.121(a)(3)  45 CFR §146.117 | The decision whether health coverage is elected for an individual (including whether the individual enrolls during special enrollment or late enrollment) is not, itself, within the scope of any health factor. However, a plan or issuer must treat special enrollees the same as similarly situated individuals who are enrolled when first eligible. |  |
| Discrimination on the basis of a health factor prohibited – In Rules for eligibility | 42 U.S.C.  §300gg-4 (a)  45 CFR §146.121(b)(1)(i) | Prohibited discrimination in rules for eligibility:   * May not have any rule for eligibility (including continued eligibility) of any individual to enroll that discriminates based on any health factor that relates to that individual or a dependent of that individual, subject to the provisions below regarding how this rule applies to benefits, allows establishment of groups of similarly situated individuals, provides for wellness programs, and permits favorable treatment of individuals with adverse health factors. |  |
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| 45 C.F.R. §146.121  (b) | Rules for eligibility include, but are not limited to, rules relating to— |  |
| 45 CFR §146.121(b)  (1)(ii)(A) | * Enrollment; |  |
| (B) | * The effective date of coverage; |  |
| (C) | * Waiting (or affiliation) periods; |  |
| (D) | * Late and special enrollment; |  |
| (E) | * Eligibility for benefit packages (including rules for individuals to change their selection among benefit packages); |  |
| (F) | * Benefits (including rules relating to covered benefits, benefit restrictions, and cost-sharing) |  |
| (G) | * Continued eligibility; and |  |
| (H) | * Terminating coverage (including disenrollment) of any individual. |  |
| 45 CFR 148.180(b)(1) | * + Plan may not establish rules for the eligibility (including continued eligibility) of any individual to enroll based on genetic information. |  |
| Discrimin-ation on the basis of a health factor prohibited – In benefits | 45 CFR  §146.121(b)  (2)(i)(A) | Prohibited discrimination in benefits:   * General rule: Issuer is not required to provide coverage for any particular benefit to any group of similarly situated individuals. |  |
| 45 CFR  §146.121(b)  (2)(i)(B) | However, benefits that are provided must be uniformly available to all similarly situated individuals.   * Any restriction on a benefit must apply uniformly to all similarly situated individuals. Must not be directed at individual participants based on any health factor.   + Thus, issuer may limit or exclude benefits in relation to a specific disease or condition, limit or exclude benefits for certain types of treatments or drugs, or limit or exclude benefits based on a determination of whether the benefits are experimental or not medically necessary, but only if the benefit limitation or exclusion applies uniformly to all similarly situated individuals and is not directed at individual participants based on any health factor of the participants. * Issuer may require the satisfaction of a deductible, or other cost-sharing requirement if the limit or cost-sharing requirement applies uniformly to all similarly situated individuals and is not directed at individual participants based on a health factor. |  |
| 45 CFR  §146.121(b)  (2)(i)(C) | * A plan amendment applicable to all individuals in one or more groups of similarly situated individuals and made effective no earlier than the first day of the first plan year after the amendment is adopted is not considered to be directed at any individual participants or beneficiaries. |  |
|  | 42 U.S.C.  §300gg-4 (b)  45 CFR §146.121(c)(1) | * + Issuer may not require a person, as a condition of enrollment or continued enrollment in the plan, to pay a premium or contribution greater than that for a similarly situated enrollee in the plan based on any health factor of the individual or a dependent of the individual. This includes discounts, rebates, payments in kind, and any other premium differential mechanisms. |  |
|  | 45 CFR 148.180(c)(1) | * + Plan may not adjust premium amount based on genetic information of the enrollee or a family member. |  |
|  | 45 CFR 148.180  (c)(2)(ii) | * + - Manifestation of a disease or disorder in one individual also cannot be used as genetic information about other, covered, individuals. |  |
| “Source of Injury” exclusions prohibited | 45 CFR §146.121  (b)(2)(iii)(A) | If a plan generally provides benefits for a type of injury, the issuer may not deny benefits otherwise provided for treatment of the injury if the injury results from an act of domestic violence or a medical condition (including both physical and mental health conditions). This rule applies in the case of an injury resulting from a medical condition even if the condition is not diagnosed before the injury. |  |
| Non-confinement and “Actively at Work” Provisions | RCW 48.43.520; WAC 284-43-2000(2) | Issuer must maintain a documented utilization review program description and written clinical review criteria based on reasonable medical evidence and to assure that reviews and second opinions are conducted in a timely manner. |  |
| WAC 284-43200(6) | Each issuer must have written procedures to assure that reviews and second opinions are conducted in a timely manner. |  |
| Discrimination directed at individuals | 45 CFR §146.121(d)(3) | **I**f the creation or modification of an otherwise-allowable employment or coverage classification is directed at individual subscribers or dependents based on any health factor of the participants or beneficiaries, the classification is not permitted unless it is more favorable treatment of individuals with adverse health factors. |  |
| Non-confinement and “Actively at Work” Provisions | 45 CFR  §146.121 (e)(1)(i) | Issuer may not establish a rule for eligibility or set any individual's premium or contribution rate based on:   * whether an individual is confined to a hospital or other health care institution; or * an individual's ability to engage in normal life activities, except to the extent permitted to distinguish among employees based on the performance of services; or * whether an individual is actively at work (including whether an individual is continuously employed), unless absence from work due to any health factor (such as being absent from work on sick leave) is treated, for purposes of the plan or health insurance coverage, as being actively at work. |  |
| 45 CFR §146.121(e)(2)(ii) | Issuer may establish a rule for eligibility that requires an individual to begin work for the employer sponsoring the plan before coverage becomes effective, provided that such a rule for eligibility applies regardless of the reason for the absence. |  |
| More favorable treatment of individuals with adverse health factors permitted | 45 CFR  §146.121 (g) | Issuer may establish more favorable rules for individuals with an adverse health factor, such as disability, than for individuals without the adverse health factor. |  |
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| **Wellness Programs**  **Wellness Programs (Cont’d)**  **Wellness Programs (Cont’d)**  **Wellness Programs (Cont’d)**  **Wellness Programs (Cont’d)**  **Wellness Programs (Cont’d)**  **Wellness Programs (Cont’d)**  **Wellness Programs (Cont’d)** |  | 42 U.S.C. §300gg-4 (j)(1) | “Wellness program” means a program of health promotion or disease prevention. |  |
| 45 CFR §146.121 (f) | Issuer may give a reward for similarly situated individuals in connection with a wellness program that satisfies the requirements below. Reward can be a discount or rebate of a premium or contribution, waiver of all or part of a cost-sharing mechanism, the absence of a surcharge, or the value of a benefit the plan would otherwise not provide. This is not considered impermissible discrimination on the basis of a health factor if the wellness program meets the following criteria as either a “participatory wellness program” or a “Health-contingent wellness program.” |  |
| 45 CFR  §146.121(f)(1)(i) | A reward based on a “Participatory wellness program” is allowable IF: |  |
| 42 U.S.C.  §300gg-4 (j)(2)(A-E) | * the program is made available to all similarly situated individuals, AND |  |
| 42 USC §300gg-4(j)(1)(B); 45 CFR §146.121(f)(1)(ii) | * none of the conditions for obtaining a reward under the program are based on an individual satisfying a standard that is related to a health factor; OR |  |
| 42 U.S.C. §300gg-4 (j)(1)(B); 45 CFR §146.121(f)(1)(ii) | * the program does not provide a reward. |  |
| 42 USC §300gg-4(j)(2); 45 CFR  §146.121(f)(2) | * + Examples: the following programs are permissible “participatory wellness programs” if participation in the program is made available to all similarly situated individuals: |  |
| 42 USC §300gg-4(j)(2)(A);  45 CFR §146.121(f)  (1)(ii)(A) | * + - A program that reimburses all or part of the cost for memberships in a fitness center; |  |
| 42 USC §300gg-4(j)(2)(B); 45 CFR §146.121(f)  (1)(ii)(B) | * + - A diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes. |  |
| 42 USC §300gg-4(j)(2)(C); 45 CFR §146.121(f)  (1)(ii)(C) | * + - A program that encourages preventive care through the waiver of the copayment or deductible requirement under a group health plan for the costs of, for example, prenatal care or well-baby visits. |  |
| 42 USC §300gg-4(j)(2)(D);  45 CFR §146.121(f)  (1)(ii)(D) | * + - A program that reimburses employees for the costs of smoking cessation programs without regard to whether the employee quits smoking. |  |
| 42 USC §300gg-4(j)(2)(E);  45 CFR §146.121(f)  (1)(ii)(E) | * + - A program that provides a reward to employees for attending a monthly health education seminar. |  |
| 45 CFR §146.121(f)  (1)(ii)(F) | * + - A program that provides a reward to employees who complete a health risk assessment regarding current health status, without any further action (educational or otherwise) required by the employee with regard to the health issues identified as part of the assessment. (*See also* §146.122 for rules prohibiting collection of genetic information.) |  |
| 42 U.S.C. §300gg-4 (j)(3) | “Health-contingent wellness program”: |  |
| 45 CFR §146.121(f)(1)(iii) | A wellness program is “health-contingent” if any condition for obtaining a reward under a wellness program is based on an individual satisfying a standard that is related to a health factor.  There are 2 types of health contingent wellness programs: activity-only and outcome-based. |  |
| 45 CFR §146.121(f)(1)(iv) | * “Activity only” wellness programs require enrollees to perform or complete an activity related to a health factor to get a reward, but not to attain or maintain a specific health outcome.   + Examples: walking, diet, or exercise programs, which some people may be unable to participate in or complete due to a health factor. A reward based on an activity only wellness program is allowable IF: |  |
| 42 USC §300gg-4(j)(3)(C); 45 C.F.R. §146.121(f)(3)(i) | * + Program must give individuals eligible for the program the opportunity to qualify for the reward under the program at least once per year. |  |
| 42 USC §300gg-4(j)(3)(A) 45 C.F.R. §146.121(f)(3)(ii); 45 CFR §146.121(f)(5) | The reward for the wellness program, coupled with the reward for other wellness programs with respect to the plan that require satisfaction of a standard related to a health factor, must not exceed 30 percent of the cost of employee-only coverage under the plan. BUT, if, in addition to employees, any class of dependents (e.g., spouses or spouses and dependent children) may participate in the wellness program, the reward must not exceed 30 percent of the cost of the coverage in which an employee and any dependents are enrolled. However, the reward may be up to 50 percent of the cost of coverage to the extent that the additional percentage is in connection with a program designed to prevent or reduce tobacco use. |  |
| 42 USC §300gg-4(j)(3)(B); 45 C.F.R. §146.121(f)(3)(iii) | * + Program must be reasonably designed to promote health or prevent disease.   + Must have a reasonable chance of improving the health of or preventing disease in participating individuals   + Must not be overly burdensome   + Must not be a subterfuge for discriminating based on a health factor   + Must not be highly suspect in the method chosen to promote health or prevent disease. |  |
| 42 USC §300gg-4(j)(3)(D); 45 CFR §146.121(f)(3)(iv) | * + The reward must be available to all similarly situated individuals. |  |
| 42 USC §300gg-4(j)(3)(D)(i); 45 CFR §146.121(f)  (3)(iv)(A) | * + Must allow a reasonable alternative standard (or waiver of the otherwise-applicable standard) for obtaining the reward for an individual for whom, for that period: |  |
| 42 USC §300gg-4(j)(3)(D)(i)(I); 45 CFR §146.121  (f)(3)(iv)(A)(1) | * + it is unreasonably difficult due to a medical condition to satisfy the otherwise applicable standard; OR |  |
| 42 USC §300gg-4(j)(3)(D)(i)(II); 45 CFR §146.121  (f)(3)(iv)(A)(2) | * + it is medically inadvisable to attempt to satisfy the otherwise applicable standard. |  |
| 45 CFR §146.121(f)  (3)(iv)(B) | * + Reasonable alternative standard must be furnished by the plan or issuer upon the individual's request or the condition for obtaining the reward must be waived. |  |
| 45 CFR §146.121(f)  (3)(iv)(C) | * + Whether a plan or issuer has furnished a reasonable alternative standard depends on “all facts and circumstances”, including but not limited to: |  |
| 45 CFR §146.121  (f)(3)(iv)(C)(1) | * + If it is completion of an educational program, the issuer must make the program available or assist the enrollee to find a program (may not require enrollee to find it unassisted). May not require enrollee to pay the cost of the program. |  |
| 45 CFR §146.121  (f)(3)(iv)(C)(2) | * + Time commitment required must be reasonable (e.g., requiring nightly one-hour class is unreasonable). |  |
| 45 CFR §146.121  (f)(3)(iv)(C)(3) | * + If it is a diet program, issuer is not required to pay for the cost of food but must pay any membership or participation fee. |  |
| 45 CFR §146.121  (f)(3)(iv)(C)(4) | * + If enrollee’s physician states that a standard is not medically appropriate for enrollee, issuer must provide a reasonable alternative standard that accommodates the medical appropriateness recommendations of the enrollee’s physician. Issuer may impose standard cost sharing under the plan for medical items and services furnished pursuant to the physician's recommendations. |  |
| 45 CFR §146.121(f)(3)(iv)(D) | * + To the extent that a reasonable alternative standard under an activity-only wellness program is, itself, an activity-only wellness program, it must comply in the same manner as if it were an initial program standard. (e.g., if the reasonable alternative standard to a running program is a walking program, individuals who cannot complete the walking program must be provided a reasonable alternative standard to the walking program.) To the extent that a reasonable alternative standard under an activity-only wellness program is, itself, an outcome-based wellness program, it must comply with the requirements for an outcome-based wellness program. |  |
| 42 USC §300gg-4(j)(3)(D)(ii); 45 CFR §146.121(f)  (3)(iv)(E) | * + If reasonable under the circumstances, an issuer may seek verification, such as a statement from an individual's personal physician, that a health factor makes it unreasonably difficult for the individual to satisfy, or medically inadvisable for the individual to attempt to satisfy, the otherwise applicable standard of an activity-only wellness program. |  |
| 42 USC §300gg-4(j)(3)(E); 45 CFR §146.121(f)(3)(v) | Issuer must disclose in all plan materials describing the terms of an activity-only wellness program the availability of a reasonable alternative standard to qualify for the reward (and, if applicable, the possibility of waiver of the otherwise applicable standard), including contact information for obtaining a reasonable alternative standard and a statement that recommendations of an individual's personal physician will be accommodated. If plan materials merely mention that such a program is available, without describing its terms, this disclosure is not required. |  |
| 45 CFR  §146.121(f)(6) | May use the following sample language, or substantially similar:  “Your health plan is committed to helping you achieve your best health. Rewards for participating in a wellness program are available to all employees. If you think you might be unable to meet a standard for a reward under this wellness program, you might qualify for an opportunity to earn the same reward by different means. Contact us at [insert contact information] and we will work with you (and, if you wish, with your doctor) to find a wellness program with the same reward that is right for you in light of your health status.” |  |
| 42 U.S.C. §300gg-4 (j)(3);  45 CFR §146.121(f)(1)(v) | An “Outcome-based wellness program” requires enrollees to attain or maintain a specific health outcome (e.g., not smoking) to obtain a reward. These wellness programs typically have two tracks to obtaining the reward: achieving the health outcome or, for enrollees who do not attain or maintain the health outcome, compliance with an alternative. Example: a wellness program tests enrollees for high blood pressure and provides a reward to those identified as within a normal or healthy range, while requiring those outside the normal or healthy range (or at risk) to take additional steps (e.g., adhering to a health improvement action plan) to obtain the same reward. A reward based on an “outcome-based wellness program” is allowable IF: |  |
| 45 CFR §146.121(f)(4)(i) | * Enrollees have the opportunity to qualify for the reward under the program at least once per year. |  |
| 42 USC §300gg-4(j)(3)(A); 45 CFR §146.121(f)(4)(ii)  45 C.F.R. §146.121(f)(5) | * The reward for the outcome-based wellness program, together with the reward for other health-contingent wellness programs with respect to the plan, must not exceed 30 percent (50% in connection with a program designed to prevent or reduce tobacco use) of the total cost of employee-only coverage under the plan. If dependents may participate in the wellness program, the reward must not exceed 30% (50% if in connection with a program to reduce or prevent tobacco use) of the total cost of the coverage for employee and dependents. The “cost of coverage” means the total amount of employer and employee contributions towards the coverage. |  |
| 42 USC §300gg-4(j)(3)(B); 45 CFR §146.121(f)(4)(iii) | * The program must be reasonably designed to promote health or prevent disease * Must have a reasonable chance of improving the health of, or preventing disease in, participating enrollees, * Must not be overly burdensome, * Must not be a subterfuge for discriminating based on a health factor, and * Must not be highly suspect in the method chosen to promote health or prevent disease. * Determination is based on all the relevant facts and circumstances. * Reasonable alternative standard to qualify for the reward must be provided to any individual who does not meet the initial standard based on a measurement, test, or screening that is related to a health factor. |  |
| 42 USC §300gg-4(j)(3)(D); 45 CFR §146.121(f)(4)(iv) | * The full reward under the outcome-based wellness program must be available to all similarly situated individuals. |  |
| 42 USC §300gg-4(j)(3)(D)(i); 45 CFR §146.121(f)  (4)(iv)(A) | * Reward is not available to all similarly situated individuals unless the program allows a reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining the reward for any individual who does not meet the initial standard based on the health factor measurement. |  |
| 45 CFR §146.121 (f)(4)(iv)(B) | * + Reasonable alternative standard must be furnished upon request or the condition for obtaining the reward must be waived. |  |
| 45 CFR §146.121 (f)(4)(iv)(C) | * + Whether issuer has furnished a reasonable alternative standard based on “all facts and circumstances”, including but not limited to: |  |
| 45 CFR §146.121  (f)(4)(iv)(C)(1) | * + If it is completion of an educational program, issuer must make the program available or help the enrollee find one (instead of making them find it unassisted), and may not require enrollee to pay for the program. |  |
| 45 CFR §146.121  (f)(4)(iv)(C)(2) | * + Time commitment required must be reasonable (e.g., a nightly one-hour class would be unreasonable). |  |
| 45 CFR §146.121  (f)(4)(iv)(C)(3) | * + If it is a diet program, the issuer is not required to pay for the cost of food but must pay any membership or participation fee. |  |
| 45 CFR §146.121  (f)(4)(iv)(C)(4) | * + If an enrollee's physician states that a plan standard is not medically appropriate for that enrollee, the plan or issuer must provide a reasonable alternative standard that accommodates the enrollee’s physician’s medical appropriateness recommendations. Issuers may impose standard cost sharing under the plan for medical items and services furnished pursuant to the physician's recommendations |  |
| 45 CFR §146.121(f)(4)(iv)(D) | * + To the extent that a reasonable alternative standard under an outcome-based wellness program is, itself, an activity-only wellness program, it must comply with the requirements as if it were an initial program standard. To the extent that the alternative standard is, itself, another outcome-based wellness program, it must comply with the requirements for an outcome-based wellness program, subject to the following special rules: |  |
| 45 CFR §146.121  (f)(4)(iv)(D)(1) | * + - The alternative standard cannot be a different level of the same standard without additional time to comply that takes into account the individual's circumstances. (e.g., if the initial standard is to achieve a BMI less than 30, the reasonable alternative standard cannot be to achieve a BMI less than 31 on that same date. But it could be to reduce BMI by a small amount or small percentage, over a realistic period of time. |  |
| 45 CFR §146.121  (f)(4)(iv)(D)(2) | * + - Enrollee must be given the opportunity to comply with the recommendations of the enrollee’s physician as a second reasonable alternative standard to meeting the reasonable alternative standard defined by the plan or issuer, but only if the physician joins in the request. The individual can make a request to involve a personal physician's recommendations at any time and the personal physician can adjust the physician's recommendations at any time, consistent with medical appropriateness. |  |
| 45 CFR §146.121(f)(4)(iv)(E) | * + - It is not reasonable to seek verification (e.g., a statement from an enrollee’s physician) under an outcome-based wellness program that a health factor makes it unreasonably difficult for the individual to satisfy, or medically inadvisable for the individual to attempt to satisfy, the otherwise applicable standard as a condition of providing a reasonable alternative to the initial standard.     - But, if issuer provides an alternative health factor measurement that involves an activity related to a health factor, then the requirements for activity-only wellness programs apply to that component of the wellness program. Under those rules, the issuer may, if reasonable under the circumstances, seek verification that the alternative activity is unreasonably difficult due to a medical condition or medically inadvisable. (e.g., if an outcome-based wellness program requires participants to maintain a certain healthy weight and provides a diet and exercise program for enrollees who do not meet the target weight, the issuer may seek verification, if reasonable under the circumstances, that a second reasonable alternative standard is needed for an enrollee for whom it would be unreasonably difficult due to a medical condition, or medically inadvisable to attempt to comply, with the diet and exercise program, due to a medical condition.) |  |
| 42 U.S.C. §300gg-4 (j)(3)(E); 45 CFR §146.121  (f)(4)(v) | * + Issuer must disclose in all plan materials describing the terms of an outcome-based wellness program, and in any disclosure that an individual did not satisfy an initial outcome-based standard, the availability of a reasonable alternative standard to qualify for the reward (and, if applicable, the possibility of waiver of the otherwise applicable standard), including contact information for obtaining a reasonable alternative standard and a statement that recommendations of an individual's personal physician will be accommodated. If plan materials merely mention that such a program is available, without describing its terms, this disclosure is not required. |  |
| 45 CFR §146.121(f)(4)(v) | Can use the sample language above. |  |
| RCW 48.43.670 | Modification of a wellness program upon renewal of a plan does not constitute discontinuation or renewal of that plan.  *Resources*: ACA FAQ Part V; ACA FAQ Part XVIII |  |
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